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Justice in Transition?
Transitional justice and its discontents in Uganda

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Justice in Transition?

Transitional justice and its discontents in Uganda

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A thesis submitted to the Department of War Studies,
King's College London for the degree of Doctor of
Philosophy, August 2014.

Abstract

This thesis explores the construction, implementation and experience of transitional justice at both the state-level in Uganda, and within the Acholi sub-region, the epicenter of the twenty-year war between the Government of Uganda and the Lord's Resistance Army. It takes 2006 as its starting point, when peace talks began between both sides in Juba, southern Sudan. Conducted against the background of the ICC's first ever arrest warrants for leading members of the LRA, these talks provided the empirical context for the major theoretical debates that dominated the nascent field of transitional justice. These included normative disagreements about the relationship between peace and justice and the relative merits of international versus indigenous approaches to justice. At Juba, an Agreement on Accountability and Reconciliation was signed and purported to address and resolve these dilemmas. To date however, we know remarkably little about the political and socio-legal dynamics and trajectory of transitional justice in Uganda *since* Juba. This thesis aims to bridge that gap, providing an in-depth, empirical study based on extensive fieldwork involving 106 semi-structured interviews, 25 focus group discussions and participant observation.

Two major dissonances are identified in the promotion, practice and experience of transitional justice in Uganda since 2006. The first highlights the dilemmas surrounding contemporary donor approaches to transitional justice in the absence of a substantive domestic political transition. The interaction of a technocratic and apolitical donor approach with a reactive, procrastinatory and occasionally opportunistic GoU approach, created a stasis which prevented the emergence of a transitional justice policy for Uganda. The second area of dissonance identified was between the 'local' as imagined in transitional justice narratives and the local as lived experience in post-conflict Acholiland. Rhetoric around particular 'Acholi' approaches to transitional justice, focusing on values of forgiveness and reconciliation, has obscured both the complexity of post-conflict local justice practices and the extent to which these processes and their outcomes were highly contingent on the wider, post-conflict socio-economic context, including poverty, physical and spiritual insecurity, and other quotidian strains. Finally, in its treatment of the northern Ugandan case, this thesis contributes to broader theoretical debates about how transitional justice is constructed and practiced, particularly in contexts where there has been no substantial political transition.

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Acronyms

AAR	Agreement on Accountability and Reconciliation
AG	Attorney General
AHA	Anti-Homosexuality Act
ARLPI	Acholi Religious Leaders Peace Initiative
CoH	Cessation of Hostilities
CAR	Central African Republic
CID	Criminal Investigations Division
DPP	Directorate of Public Prosecutions/Director of Public Prosecutions
DRC	Democratic Republic of Congo
GoU	Government of Uganda
GoSS	Government of South Sudan
GoS	Government of Sudan
GUSCO	Gulu Save the Children Organisation
HSMF	Holy Spirit Mobile Force
ICC	International Criminal Court
ICC-OTP	International Criminal Court Office of the Prosecutor
ICD	International Crimes Division
ICG	International Crisis Group
IDP	Internally Displaced Person
JLOS	Justice, Law and Order Sector
JLOS-DPG	Justice, Law and Order Sector Development Partners Group
JLOS-TJWG	Justice Law and Order Sector Transitional Justice Working Group
JRP	Justice and Reconciliation Project
KKA	Ker Kwaro Acholi
LC	Local Council
LRA	Lord's Resistance Army
LRM	Lord's Resistance Movement
NGO	Non-governmental organisation
NRA	National Resistance Army
NRM	National Resistance Movement
POMB	Public Order Management Bill

PRDP	Peace, Recovery and Development Plan
RDC	Resident District Commissioner
RLP	Refugee Law Project
SDHC	Special Division of the High Court
SPLA	Sudan People's Liberation Army
SPLM	Sudan People's Liberation Movement
SIP II	Strategic Investment Plan II
SIP III	Strategic Investment Plan III
SWAY	Survey on War Affected Youth
TFV	Trust Fund for Victims (ICC)
TJ	Transitional justice
UGX	Ugandan Shillings
UHRC	Uganda Human Rights Commission
UPDA	Uganda People's Democratic Army
UPDF	Uganda People's Defence Force
UNDP	United Nations Development Programme
UN OHCHR	United Nations Office of the High Commissioner for Human Rights
UN OCHA	United Nations Office for the Co-ordination of Humanitarian Affairs
UNLA	Ugandan National Liberation Army
UNSC	United Nations Security Council
UNSG	United Nations Secretary General
ULRC	Uganda Law Reform Commission
WCC	War Crimes Court

1. Introduction

In late 2003, the Government of Uganda (GoU) issued an innocuous sounding 'Referral of the Situation Concerning the Lord's Resistance Army' to the newly formed International Criminal Court (ICC). Early the following year, at a public press conference in London, the ICC Chief Prosecutor, Luis Moreno Ocampo, and the President of Uganda, Yoweri Museveni, made public a legal process which placed the ongoing conflict in northern Uganda at the heart of debates about the relationship between peace and justice. In October 2005, the ICC unsealed its first ever arrest warrants, charging five Lord's Resistance Army (LRA) commanders with war crimes and crimes against humanity.¹ The Ugandan situation, said one observer, was 'a litmus test for the much celebrated promise of global justice'.² Payam Akhavan, a former legal adviser to the International Criminal Tribunal for Yugoslavia (ICTY), went so far as to suggest that because of the ICC intervention, 'the prospect of sustained national peace may finally be within Uganda's reach for the first time since its independence in 1962'.³ A year later, in 2006, peace talks between the LRA and the GoU began in Juba, the capital of the then semi-autonomous Government of South Sudan (GoSS).⁴ For some, Akhavan's position remained credible, for others precisely the opposite was now the case: the ICC arrest warrants were a direct impediment to the successful completion of the most promising peace process in twenty years.

From the outset, the ICC faced significant controversy in Uganda. This centered on two particularly delicate issues. First, commentators questioned the wisdom of attempting to render justice prior to the settlement of the conflict; and second they questioned the

¹ For details of the arrest warrants see the ICC website: <http://icc-cpi.int/Menus/ICC/Situations+and+Cases/Situations/Situation+ICC+0204/> (accessed January 2014). Arrest warrants were issued for alleged Commander in Chief of the LRA, Joseph Kony; alleged Second-in-Command of the LRA, Vincent Otti (now deceased); alleged deputy Army Commander of the LRA, Okot Odhiambo; Alleged Brigade Commander, Dominic Ongwen and alleged Deputy Army Commander, Raska Lukwiya (now deceased).

² Quoted in Mark Kersten, 'Why Uganda is our best chance to get the bottom of the peace and justice debate', *Justice in Conflict* (15 June 2011), <http://justiceinconflict.org/2011/06/15/why-uganda-is-our-best-chance-to-get-to-the-bottom-of-the-peace-justice-debate/> (accessed November 2011)

³ Payam Akhavan, 'The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court,' *American Journal of International Law*, 99:2 (2005), pp.403-421, 421.

⁴ South Sudan was declared an independent state in July 2011, following a popular referendum.

appropriateness of an international body intervening in a local space.⁵ Many Ugandans, particularly the Acholi in the north, who had suffered at the hands of both the LRA *and* the Ugandan People's Defence Force (UPDF), could not understand why only one side was being held to account. Then, as it became clear that the ICC would under no circumstances withdraw its warrants, the court came to be seen by many as the ultimate peace spoiler, an institution whose inflexibility would prolong a devastating conflict and thus determine the fate of millions of northern Ugandans.⁶ A 'victim' discourse developed, amplified through Uganda-based NGOs, Acholi religious, traditional and political leaders, and sympathetic scholars. The narrative was damning: the very people in whose interests the ICC should have been acting – the victims of mass atrocities – viewed the court as biased, counterproductive, and recklessly irresponsible.⁷ These charges were compounded by another: not only was the ICC dangerous, it was a sinister product of Western judicial neo-imperialism that sought to privilege foreign concepts of retributive justice over traditional 'Acholi values' of reconciliation and forgiveness.⁸ These contentions created a highly charged atmosphere at the Juba peace talks (JPT), and sparked a vociferous debate among researchers, international donors, civil society and local leaders, about *what the Acholi truly want* in terms of justice and how that might be achieved in the context of ongoing negotiations.⁹

At the time of the Juba talks, Uganda was *the* transitional justice case study. This was the first time anywhere that peace talks had begun against the backdrop of charges brought by the ICC against key members of one of the negotiating sides.¹⁰ The talks provided

⁵ Critiques of the ICC's intervention in Uganda at this time include: Refugee Law Project, 'On the Announcement of Formal Investigations of the Lord's Resistance Army by the Chief Prosecutor of the International Criminal Court and Its implications for the Search for Peaceful Solutions to the War in Northern Uganda' (28 July 2004); Lucy Hovil and Zachary Lomo, 'Whose Justice? Perceptions of Uganda's Amnesty Act 2000', *Refugee Law Project Working Paper*, 15 (February, 2005); Lucy Hovil and Joanna Quinn, 'Peace First, Justice Later: Traditional Justice in Northern Uganda', *Refugee Law Project Working Paper*, 17 (July, 2005); Adam Branch, 'International Justice, Local Injustice' *Dissent Magazine*, (Summer, 2004); Phillip Kasaija Apuuli, 'The International Criminal Court (ICC) and the Lord's Resistance Army (LRA) Insurgency in Northern Uganda', *Criminal Law Forum*, 15:4 (2004), pp.391-409.

⁶ Ibid. There is an international relations literature which examines the notion of peace process 'spoilers', see, for example, Stephen John Steadman, 'Spoiler Problems in Peace Processes', *International Security*, 22:2 (1997), pp.5-53 and Marie-Joelle Zahar, 'Reframing the Spoiler Debate in Peace Processes' in John Darby and Roger MacGinty (eds.), *Contemporary Peacemaking: Conflict, Violence and Peace Processes* (New York: Palgrave Macmillan, 2003).

⁷ *ibid*

⁸ *ibid*

⁹ Ibid; Adam Branch, *Displacing Human Rights: War and Intervention in Northern Uganda* (New York: Oxford University Press, 2011), p.208

¹⁰ Although, it should be noted, not the first time that charges were brought against persons thought to be critical to a peace process. In 1995 the Bosnian Serb political and military leaders Radovan Karadzic and Ratko Mladic were indicted by the ICTY, in the midst of conflict, ensuring their exclusion from

empirical context for the major theoretical debates that had dominated the nascent field of transitional justice since its emergence in the late-1980s.¹¹ Was peace more important than justice? Should truth and reconciliation have been foregrounded over prosecution? Were local justice methods more appropriate than national and international ones? One scholar, present in Juba at the time, likened these ‘either/or’ polemics to competitive sports rivalry: a football match in which one felt they had to choose ‘sides’.¹² But while the academic and NGO discussion was hyperactive during Juba it quite quickly petered out around the time that the talks failed, in December 2008. This is surprising because the Juba process left an important legacy – an Agreement on Accountability and Reconciliation (AAR), signed by the GoU and the LRA/M in June 2007 and an implementing protocol signed in February 2008 (from here on the ‘AAR agreements’).¹³ The agreements proposed a national procedure for dealing with LRA *and* UPDF crimes: domestic trials, in combination with other mechanisms, including traditional justice; a ‘body’ to ‘inquire into the past’; and reparations for victims. The GoU committed itself to implementing the AAR framework regardless of the failure of the talks. To date, however, we know remarkably little about the trajectory of transitional justice debate, policy and practice in Uganda *since* the signing of that agreement. That story, in all its complexity, is the subject of this thesis.

Research approach

subsequent peace talks, and in May 1999 the sitting president of the Federal Republic of Yugoslavia, Slobodan Milosevic, was indicted by the ICTY for war crimes in Kosovo.

¹¹ For a conceptual history of transitional justice, see Paige Arthur, ‘How “Transitions” Reshaped Human Rights: A Conceptual History of Transitional Justice’, *Human Rights Quarterly*, 31 (2009), pp.321-367; for overview of the key debates in the scholarly field, see Leslie Vinjamuri and Jack Snyder, ‘Advocacy and Scholarship in the Study of International War Crime Tribunals and Transitional Justice’, *Annual Review of Political Science*, 7 (2004), pp.345-362; Dustin N. Sharp, ‘Interrogating the Peripheries: The Preoccupations of Fourth Generation Transitional Justice’, *Harvard Human Rights Journal*, 26 (2014), pp.149-178.

¹² Comments made by Dr Phil Clark, ‘Taking Stock of Transitional Justice’, Conference of the Oxford Transitional Justice Network, Oxford, June 2009, <http://media.podcasts.ox.ac.uk/socleg/otjr/clark->

¹² Comments made by Dr Phil Clark, ‘Taking Stock of Transitional Justice’, Conference of the Oxford Transitional Justice Network, Oxford, June 2009, <http://media.podcasts.ox.ac.uk/socleg/otjr/clark-medium-audio.mp3?CAMEFROM=podcastsGET> (accessed February 2011)

¹³ Agreement on Accountability and Reconciliation between the Government of the Republic of Uganda and the Lords Resistance Army/Movement, 29 June 2007, available online at http://www.beyondjuba.org/peace_agreements.php (accessed September 2010); Annexure to the Agreement on Accountability and Reconciliation, 19 February 2008, available online at http://www.beyondjuba.org/peace_agreements.php (accessed September 2010).

This thesis empirically examines the political and socio-legal dynamics and trajectory of transitional justice in Uganda since 2006, when the Juba peace talks began. It is, in essence, a case study, which uses detailed, in-depth contextual analysis to develop a better understanding of a contemporary phenomenon, ‘transitional justice’, in its ‘real life context’.¹⁴ Putting aside idealized notions of what transitional justice ‘*ought*’ to achieve, it interrogates the *reality* of transitional justice in Uganda.¹⁵

The research addresses two central themes. The first is how transitional justice has been perceived, conceptualised, transacted and produced in various ‘localities’ across the Ugandan political spectrum.¹⁶ This ranges from Ministers sitting in Cabinet meetings, to staff sitting in donor offices, to ‘traditional’ chiefs in rural Acholiland. This involves analysis of how different transitional justice conceptions, underpinned by alternate logics and objectives, interacted, collided and sometimes reinforced one another. The second area of inquiry moves beyond transitional justice *per se*, to address how relevant this project, in all its multiple conceptions, has been to people on the ground in Acholiland who negotiate post-conflict realities on a daily basis.

Before proceeding, it should be noted that while other sub-regions in northern Uganda were affected by LRA violence, most notably Lango, Teso and West Nile, Acholiland was the epicenter of violence and displacement throughout the war.¹⁷ Acholiland was also distinct from other war-affected regions in northern Uganda in that its people confronted, *in extremis*, two dilemmas associated with the complexity of post-Cold War conflicts. The first was that mass violence was perpetrated and suffered by civilians who knew one another – neighbours and relatives – who, in the war’s aftermath have had to

¹⁴ Robert K. Yin, *Case Study Research: Design and Methods*, (Newbury Park: Sage, 1984).

¹⁵ It has become almost a truism that much of the theoretical transitional justice literature is highly normative and often assumes links between process and outcome that the empirical evidence does not support. For studies examining these claims, see Oskar Thoms, James Ron, and Roland Paris, ‘State-Level Effects of Transitional Justice: What Do We Know?’, *International Journal of Transitional Justice*, 4:3(2010), pp. 329-354 and Anna Macdonald, *Local Understandings and Experiences of Transitional Justice: a review of the evidence*, Justice and Security Research Programme, Working Paper 6 (2013).

¹⁶ See Rosalind Shaw and Lars Waldorf, ‘Introduction’, in Lars Waldorf and Rosalind Shaw (eds.), *Localizing Transitional Justice: Interventions and Priorities after Mass Violence*, (Stanford: Stanford University Press, 2010), pp.6-9, for a discussion about framing the ‘local’ in transitional justice research.

¹⁷ Today, the Acholi sub-region, also sometimes called Acholiland, is made up of seven districts: Gulu, Kitgum, Pader, Agago, Nwoya, Amuru and Lamwo. There is also a small Acholi population in Southern Sudan. The 2002 census put the population of Acholiland at 1.17 million. Fieldwork was also conducted in West Nile, but not as intensively. The most comprehensive study of ‘victim perceptions’ across the entire northern Uganda region is *Making Peace Our Own, Victims Perceptions of Accountability, Reconciliation and Transitional Justice in Northern Uganda*, Report of the United Nations High Commissioner For Human Rights (2007).

co-exist again as 'intimate enemies'.¹⁸ The second dilemma was that those who carried out violent acts as members of the LRA, and those who suffered at their hands, were a diverse group, and often did not fit neatly into either 'victim' or 'perpetrator' categories. The majority, as Erin Baines argues:

'were neither high-level organizers, nor passive victims. They include bystanders, collaborators, informants, forced perpetrators, victims-turned-perpetrators and perpetrators-turned-victims'.¹⁹

It was into this highly complex social and moral situation that different transitional justice conceptions emerged and intervened. This thesis is concerned both with the motivations and political objectives informing these conceptions, but also with the way in which they fit with what Juan Diego Prieto labelled, in the context of Columbia, 'local co-existence situations'.²⁰ It is both important and necessary to make a distinction between 'transitional justice' as an articulated set of prescriptions about how society ought to respond to mass atrocity, and what might be termed 'justice in transition'. 'Justice in transition' here refers to the ways in which communities across Acholiland, affected by violence, construct and experience social coexistence, justice, and repair, in the context of their everyday lives.²¹ As will be shown, sometimes these processes overlapped with macro-transitional justice narratives; in other cases a relationship was much harder to discern.

The approach to this research takes as a starting point the assertion of Bruce Baker and Eric Scheye that conventional paradigms in international policy need to be challenged by an assessment of 'the reality on the ground... unshackled by normative considerations'.²² Similarly, Alex De Waal makes reference to the 'original sin' of much international policy, namely that it prescribes and justifies while overlooking the essential analysis of how

¹⁸ Kimberly Theidon, 'Justice in Transition: the micro-politics of reconciliation in postwar Peru', *Journal of Conflict Resolution*, 50:3 (2006), pp.433-457. This dynamic is in many post-Cold War conflict contexts, see for example, Mahmood Mamdani, *When Victims Become Killers: Colonialism, Nativism, and the Genocide in Rwanda* (Princeton: Princeton University Press, 2002) and Waldorf and Shaw, 'Localizing'.

¹⁹ Erin Baines, 'Spirits and Social Reconstruction After Mass Violence: Re-thinking Transitional Justice', *African Affairs*, 109:436 (2010), pp.409-430; Erin Baines, 'Complex Political Perpetrators: Reflections on Dominic Ongwen', *Journal of Modern African Studies*, 47:2 (2009), pp.163-191.

²⁰ Juan Diego Prieto, 'Together after War While the War Goes On: Victims, Ex-Combatants and Communities in Three Colombian Cities', *International Journal of Transitional Justice*, 6 (2012), p.525-546

²¹ Pierre Hazan, 'Transitional Justice After September 11', in Shaw et. al, 'Localizing', pp.49-65; Pilar Riano Alcala and Erin Baines, 'Editorial Note', *International Journal of Transitional Justice*, 6 (2012), pp.385-393, 385; Prieto 'Together', p.525-546.

²² Bruce Baker and Eric Scheye, 'Multi-layered justice and security delivery in post-conflict and fragile states', *Conflict, Security and Development*, 7:4 (2007), pp.503-528, p.514

states and societies *actually* function.²³ Indeed, a widespread critique of transitional justice scholarship and policy is that it has been too heavily rooted in normative notions of what is inherently believed to be right, rather than evidence about what has been occurring on the ground. David Backer has highlighted the disproportionate emphasis in transitional justice scholarship on the ‘moral-philosophical and jurisprudential aspects’ of transitional justice processes and a preoccupation with ‘institutional design and implementation’, while Oskar Thoms *et al* have argued that transitional justice debates are ‘faith based’ rather than ‘fact based’.²⁴ Indeed, despite the growth of the field and the proliferation of transitional justice practices, we still have a very rudimentary understanding of how these interventions are *actually* shaped and experienced domestically.

This is recognised by both scholars and practitioners as a serious shortcoming. Harvey Weinstein’s lamentation that ‘as a field, we have not been successful at promoting a research agenda that values the study of effectiveness’ is widely shared.²⁵ One response has been a series of quantitative, large-n comparative studies, which employ datasets in order to try and establish causal links between transitional justice and broader, systemic statebuilding objectives such as peace, democratisation and human rights adherence.²⁶ These studies draw upon the ‘justice cascade’ theory, conceptualized by Ellen Lutz and Kathryn Sikkink in 2001 as a ‘dramatic shift in the legitimacy of the norms of individual criminal accountability for human rights violations and an increase in actions (like prosecutions) on behalf of those norms’.²⁷ The argument follows that since the 1970s, there has been a proliferation of national, transnational and international criminal accountability for human rights crimes, and that this represents a ‘tipping point’, a moment where ‘a critical mass of actors has adopted a norm of practice, creating a strong momentum for change’.²⁸ To date, critics have pointed to several methodological and

²³ Alex De Waal, ‘Dollarised’, *London Review of Books*, 32:12 (2010), pp.31-41.

²⁴ David Backer, ‘Cross-National Comparative Analysis’ in Hugo van der Merwe, Victoria Baxter and Audrey R. Chapman (eds.), *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (Washington D.C: USIP Press, 2009), 23-91; p.60 and Thoms et. al, ‘State-Level’, p.5.

²⁵ Harvey Weinstein, ‘Editorial Note: The Myth of Closure, the illusion of Reconciliation: Final Thoughts on Five Years as Co-Editor-In-Chief’, *International Journal of Transitional Justice*, 5:1 (2011), pp.1-10, p.3.

²⁶ See for example, Tricia Olsen, Leigh Payne and Andrew Reiter, *Transitional Justice in the Balance: Comparing Processes, Weighing Efficacy* (Washington D.C: USIP Press, 2010) and Hun Joon Kim and Kathryn Sikkink, ‘How do Human Rights Prosecutions Improve Human Rights After Transition?’, *Interdisciplinary Journal of Human Rights Law*, 7:1 (2010), pp.69-90.

²⁷ Quoted in Kathryn Sikkink, *The Justice Cascade: How Human Rights Prosecutions are Changing the World* (W.W.Norton: New York, 2011), p.6.

²⁸ *Ibid*, p.7.

data problems plaguing large-n macro-level TJ impact studies.²⁹ Furthermore, these studies claim to tell us broadly whether accountability mechanisms decrease human rights abuses and ‘improve democracy’ but cannot tell us why, how or when. This can only be understood through deep, contextual engagement with the underlying social, political and economic dynamics in any given place.

The fact that a transitional or post-conflict regime has a new human rights framework or transitional justice policy tells us very little about whether society as a whole is on a new trajectory and in particular how communities and individuals understand and perceive these changes and whether this is reflected in everyday activity and behavior. Indeed the first scholars to really engage with the ‘local’ in transitional justice asked whether ‘universalistic assumptions about the benefits of justice accord with what people think on the ground?’ and whether ‘adequate account is taken of non-western cultures and beliefs and local practices of justice?’.³⁰ This is an area of inquiry that tends to be ethnographic and interpretive and recently, edited volumes and journal collections have been published which engage closely with how transitional justice is viewed from the bottom up, across cases.³¹ This thesis takes this methodological and epistemological approach as its starting point and posits that such an approach is likely to ‘destablise’ many of the norms and assumptions upon which the positivist, large-n quantitative studies rest.

Transitional justice in Uganda ‘since Juba’ is not easy terrain to navigate or conceptualise, marked as it has been by a plurality of claims, objectives and processes. What this thesis shows is that transitional justice was constructed, implemented and experienced in messy, liminal, and multiple ways. The contribution this research makes is three-fold. Firstly, through deep contextual analysis, it presents the first empirical account of the trajectory that transitional justice, in all of its multiple conceptions, has taken at both the state level in Kampala, and the local level in Acholiland, since the Juba peace talks began in 2006. Secondly, two major dissonances are identified in the promotion, practice and experience of transitional justice in Uganda since 2006. The first is between contemporary technocratic donor approaches to transitional justice in Uganda and the

²⁹ For an overview of these critiques, see Thoms *et al.*, ‘State-Level’.

³⁰ Eric Stover and Harvey Weinstein, *My Neighbour, My Enemy: justice and community in the aftermath of mass atrocity*, (New York: Cambridge University Press, 2006), p.2.

³¹ See, for example, Shaw *et al.* ‘Localising’; Alexander Hinton (ed.) *Transitional Justice: Global Mechanisms and Local Realities after Mass Violence* (Rutgers: Rutgers University Press, 2011); International Journal of Transitional Justice ‘Special Issue’ on ‘Transitional Justice and the Everyday’ (November 2012).

reactive, procrastinatory and occasionally opportunistic GoU approach. The interaction between these approaches created a stasis which has prevented the emergence of a transitional justice policy for Uganda. The second dissonance identified was between the local as imagined in transitional justice narratives and the local as lived experience in post-conflict Acholiland. Rhetoric around particular ‘Acholi’ approaches to transitional justice, focusing on values of forgiveness and reconciliation, have not taken sufficient account of the highly flexible nature of local justice practices and the extent to which justice and reconciliation decisions are contingent on a wide range of post-conflict factors, including poverty and physical and spiritual insecurity. Thirdly this thesis provokes broader, theoretical questions about the wisdom of promoting transitional justice in the absence of a substantive political transition; the prudence of current donor approaches to transitional justice; the relationship between over-simplified narratives about the ‘local’ and local realities; and crucially, how all of this relates to the individuals and communities who have been affected by violence, as they try to come to terms with what has happened to them and keep going.

Background: War and transitional justice in northern Uganda

The LRA was formed in 1987 by Joseph Kony, an Acholi who saw himself as a spirit medium and ‘spokesperson of God’.³² The LRA immediately began an armed rebellion against President Museveni’s National Resistance Movement (NRM) government, which had installed itself in Kampala the preceding year. The war between the Ugandan government and the LRA lasted roughly twenty years. It was characterized by the brutal suffering of northern Ugandan civilians who bore the brunt of both LRA and NRA/M violence. The LRA was notorious for the vicious injuries it inflicted upon those who were regarded as unsupportive of the rebel cause. Incidents included the severing of lips, noses and ears and the dismembering and cooking of bodies.³³ The LRA was also notable for its strategy of abducting and forcibly recruiting members, often children. Chris Blattman and Jeanie Annan, who conducted some of the most rigorous statistical analyses of abduction trends and patterns as part of the Survey of War Affected Youth (SWAY), estimated that around 66,000 people were abducted by the LRA during the

³² Tim Allen and Koen Vlassenroot, ‘Introduction’, in Tim Allen and Koen Vlassenroot (eds.), *The Lords Resistance Army, Myth and Reality* (London: Zed Books, 2010), pp.1-25, p.9-10.

³³ For accounts, see for example, ‘When the sun sets, we start to worry...’, United Nations Office for the Coordination of Humanitarian Affairs and IRIN (2004).

period that it was operational in northern Uganda, and roughly four fifths were under the age of eighteen.³⁴ The SWAY data challenged ‘popular wisdom’ that 80 per cent of the LRA was made up of abductees but, as the authors note, ‘the 80 per cent figure is only a mild overstatement’.³⁵

Throughout the war Acholi political, religious, and traditional leaders made efforts to try to secure a peaceful solution to the conflict. Their most notable success was a campaign for a blanket amnesty to cover all Ugandans ‘formerly or currently’ engaged in rebellion against the NRM government since 1986.³⁶ Overcoming opposition from President Museveni, an Amnesty Act was passed by Parliament in January 2000, and although it was originally valid for only six months, it has been renewed several times since.³⁷ As of May 2012, 26,288 people had benefitted from the amnesty, 49% of whom were members of the LRA.³⁸ The Amnesty Act also established an Amnesty Commission, whose duties included ‘re-settling’ and ‘reintegrating’ reporters back into their communities, and providing them with modest ‘reinsertion packages’ containing basics including a mattress, plastic cups, and maize and bean seeds.³⁹ Since relative peace returned to northern Uganda in 2006, the number of reporters has gradually dwindled, and international and government support for the Amnesty Act and Commission also ebbed away.⁴⁰ In its

³⁴ Christopher Blattman and Jeannie Annan, ‘On the nature and causes of LRA abduction: what the abductees say’, in Allen and Vlassenroot, ‘Lords’, pp. 132-156, p.135; The authors acknowledge that any attempt to estimate abduction numbers is at best an ‘educated guess’. They account for example, for falsely reported abductions but conclude that this may account for ‘at most a 5 or 10 percent overstatement’, see Blattman and Annan, ‘Nature’, p.134-5.

³⁵ Jeannie Annan, Christopher Blattman, Roger Horton, *The State of Youth and Youth Protection in Northern Uganda, Findings from the Survey for War Affected Youth*, UNICEF (2006).

³⁶ For good analyses of the campaign for a blanket amnesty, see, Okello Lucima (ed.), *Protracted conflict, elusive peace: Initiatives to end violence in northern Uganda*, (London: Accord, 2002); Claudia Giampietri, *Rendering Justice, Pursuing Peace*, (Gulu: Human Rights Focus, 2010); Tim Allen, *Trial Justice: The International Criminal Court and the Lord’s Resistance Army* (London: Zed Books, 2006).

³⁷ For a thorough analysis of the legal implications of the Act, see Sarah Nouwen, *Complementarity in the line of fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan* (Cambridge: Cambridge University Press, 2013), pp. 206-228; In May 2012, Part II of the Amnesty Act, the part of the Act that allows for the granting of an Amnesty Certificate was lapsed. It was re-instated in May 2013. This is explored in Chapter 6.

³⁸ Author interview, Justice Onega, Chair, Amnesty Commission, Kampala, 13.06.2012

³⁹ There is no unitary Demobilization, Disarmament and Reintegration (DDR) programme for northern Uganda. Because of the nature of abduction and return (which usually involved ‘escaping’ or being ‘rescued’), most non-government and government initiatives focus on ‘Reintegration’ rather than on the two ‘Ds’. Disarmament and demobilisation has been managed by the UPDF, and consists of short term detention in the UPDF Child Protection Unit, normally for around 48 hours, followed by transfer to a reception centre.

⁴⁰ In 2011, for example, there were only 29 reporters; this was down from 2906 in 2009 (email exchange between Amnesty Commission and Author, September 2012). The two remaining reception centres in Gulu, Save the Children Organisation (GUSCO) and the World Vision, each had only two reporters in residence in August 2012. By July 2013, both centres were preparing to close. The trajectory that the

more active period in the early and mid-2000s, the Commission carried out its re-settlement and re-integration duties in co-ordination with the numerous NGO-administered reception centres that were set up across Acholiland in the early 2000s.⁴¹ Since then, due to the lack of reporters, most have closed or are in the process of closing. There exists no precise data on the proportion of LRA returnees who actually took up the reception and amnesty process. The best estimates indicate that over a half did not pass through a reception centre or receive any assistance from NGOs or from the government on their return.⁴²

Since 1988, the Ugandan government's response to the LRA shifted between negotiation and military offensives. From the mid-1990s onwards the government began moving civilians, often forcibly, from rural areas, into camps where the UPDF could 'protect' them. It was estimated that by the late 1990s most of the people living in the Acholi sub-region were being kept in wretched conditions in 'rural prisons,' subjected to what would later be termed 'social torture'.⁴³ Indeed, by the early 2000s, the horrendous reality of life in the camps, and the perceived inadequacy of the GoU response to the situation in the north, led to increasing international pressure for a resolution to the conflict.⁴⁴ A seemingly incoherent set of responses ensued. The GoU flip-flopped between support for peace negotiations and support for military strikes, and in 2004 President Museveni publicly announced the ICC referral while also declaring a ceasefire in the hope that Joseph Kony and his senior commanders would accept amnesty.⁴⁵ Then, in late 2005 Riek Machar, who was then vice president of GoSS, offered to mediate peace talks between the GoU and the LRA. For reasons that will be explored in detail in Chapter 4, both sides agreed. The peace talks began in Juba in July 2006, and resulted in a Cessation of Hostilities Agreement (CHA), signed between the LRA and the

Amnesty Act has taken, and donor support for the Act, is a complex story that is told in more detail in Chapter 6.

⁴¹ The most comprehensive study on the Reception Centres is Mareike Schomerus and Tim Allen, *A Hard Homecoming, Lessons learned from the reception center process in northern Uganda*, (USAID and UNICEF: August 2006).

⁴² Annan et. Al, 'SWAY', p.63; Schomerus and Allen, 'Hard', p.viii. Many of those who did take up the Amnesty Certificate later complained that they never received the re-insertion package. In 2012, the Amnesty Commission claimed that of the 26,232 reporters that had been granted Amnesty, to date, 20,263 had been issued with reinsertion kits.

⁴³ Allen and Vlassenroot, 'Introduction', p.14-15; Chris Dolan, *Social Torture, The Case of Northern Uganda, 1986-2006* (New York: Berghahn Books, 2011).

⁴⁴ Allen and Vlassenroot, 'Myth', provides a series of contributions which analyse the national and international dynamics that led to the peace talks. This will be explored more in Chapter 4.

⁴⁵ 'Amnesty bitter on Kony pardon', New Vision, 17 November 2004, <http://www.newvision.co.ug/E/8/13/400686> (accessed January 2012)

GoU in August 2006. Since then, relative peace returned to northern Uganda.⁴⁶ It was estimated in 2010 that the vast majority of the 1.8 million people who lived in IDP camps at the peak of the crisis had returned to their areas of origin, or resettled elsewhere.⁴⁷

Over six years since the signing of the AAR agreements at Juba in 2007/8, there exists a mixture of international, governmental, NGO, private and hybrid initiatives aimed at transitional justice and broader social repair in northern Uganda, but these do not fall within a single policy framework or set of guiding principles. At the state level, transitional justice discussions, research, policy development and programming has been based on implementation of the AAR agreements. This has been co-ordinated by the Justice Law and Order Sector (JLOS) secretariat, which oversees the work of seventeen government departments, and is funded mostly by European donors.⁴⁸ Linked to transitional justice objectives but not explicitly framed as such, was the Government's Peace, Recovery and Development Programme for Northern Uganda (PRDP), launched in September 2007. This programme has been administered by the Office of the Prime Minister (OPM), and contains four strategic objectives, one of which was 'peace-building and reconciliation.' This objective is predominantly donor-funded.

In mid-2013, JLOS circulated a draft Transitional Justice Policy amongst 'key stakeholders' for comment, but it was widely criticised as 'incoherent' and incomplete, and, as of the time of writing, in July 2014, its future remained uncertain.⁴⁹ Of all the accountability and reconciliation 'modalities' agreed upon in the AAR, only the establishment of a special division of the High Court of Uganda – later named the International Crimes Division (ICD) – was implemented. The court has heard only one ill-fated war crimes case, that of former LRA member Thomas Kwoyelo (which is the focus of Chapter 6). The GoU also passed an International Criminal Court Act (ICC Act), in 2010, which provided for domestic jurisdiction over ICC Statute crimes.⁵⁰ There

⁴⁶ While the Cessation of Hostilities Agreement (CHA) ended LRA attacks inside Uganda it did not lead, as anticipated, to a conclusive peace agreement. The LRA has now shifted operations to South Sudan, the Democratic Republic of Congo and the Central African Republic.

⁴⁷ UNHCR Country Operations Profile – Uganda, <http://www.unhcr.org/pages/49e483c06.html>. (accessed January 2014).

⁴⁸ Donor support for JLOS is explored in Chapter 5.

⁴⁹ National Transitional Justice Policy (3rd Draft, May 2013) (on file with author); *A Renewed Promise for Peace and Justice: The Reinstatement of Uganda's Amnesty Act*, Refugee Law Project Press Release (29 May 2013).

⁵⁰ International Criminal Court (ICC) Act, Uganda, March 2010

has been no significant progress on initiatives aimed at reparations or truth seeking.⁵¹ ‘Traditional’ justice processes, meanwhile, still remain the subject of policy discussion.⁵² The much-touted ‘*mato oput*’ ceremonies, promoted by advocates as Acholi accountability and reconciliation rituals, have not taken place in large numbers. Varying accounts placed the number of *mato oput* rituals that have been conducted between perpetrator and victim clans, in response to crimes committed during the conflict, at six at the most.⁵³ The Prime Minister of *Ker Kwaro Acholi*, the cultural body of the Acholi, said there had only been five.⁵⁴

Outside of the central government framework there have been numerous interventions in Acholiland which explicitly use the term ‘transitional justice’. There exists, for example, a plethora of donor-funded initiatives aimed at encouraging dialogue around reconciliation and forgiveness for wrongs committed during the conflict. Best-known among the organisations undertaking these activities are the Acholi Religious Leaders Peace Initiative (ARLPI) and the Acholi cultural institution the *Ker Kwaro Acholi* (KKA), as well as prominent NGOs, including the Refugee Law Project (RLP) and the Justice and Reconciliation Project (JRP). These organisations regularly interact at local government level with the District Reconciliation and Peace Teams (DRPT), which are present in each of Acholiland’s seven districts, and are responsible for dealing with conflicts relating to the 20-year war.

Current state of the literature on transitional justice in Uganda

Transitional justice emerged as a fully-fledged subject of academic inquiry and as a policy tool during the 1990s, although debates on transitional justice themes were evident throughout the twentieth century and long before that.⁵⁵ The United Nations Secretary General (UNSG), Kofi Annan, outlined the UN’s normative commitment to transitional justice in his landmark report in 2004. He defined transitional justice as:

⁵¹ This is discussed in detail in Chapter five.

⁵² In 2012, JLOS released a long awaited study report, Justice Law and Order Sector, *Traditional Justice and Truth Telling and National Reconciliation*, Study Report (July 2012) but with the delay on the National Transitional Policy, nothing has been implemented.

⁵³ The Prime Minister of Ker Kwaro Acholi put the number at four in August 2013, (author interview). The author was also informed about another Mato Oput ceremony that had taken place near Purrong sub-county between two clans in 2012. This is explored in more detail in Chapter 7.

⁵⁴ *ibid*

⁵⁵ See for example, Jon Elster, *Closing the Books: Transitional Justice in Historical Perspective* (Cambridge: Cambridge University Press, 2004).

‘the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large scale past abuses, in order to ensure accountability, serve justice and achieve reconciliation’.⁵⁶

Since then diplomats, lawyers, politicians, and scholars, have echoed the refrain that transitional justice must be implemented not only to ensure accountability for odious crimes, but also to promote democracy, reconciliation, truth, and even peace.⁵⁷ Foreign aid and development agencies regularly engage with transitional justice issues, and mediators can no longer escape the call for accountability to be included in peace negotiations.⁵⁸ In 2011 the World Bank’s World Development Report made explicit links between transitional justice, security, and development, and highlighted transitional justice as a ‘core program tool’ for breaking cycles of violence.⁵⁹ The same year, the UN Human Rights Council established a mandate for a special rapporteur on the promotion of truth, justice, reparation, and guarantees of non-recurrence. Access to justice, including transitional justice, is now widely regarded as a crucial component of the post-2015, post-Millennium Development Goal (MDG) agenda.⁶⁰ A recent editorial note in the *International Journal for Transitional Justice* stated that since the early 1990s ‘well over a billion dollars has been spent on transitional justice mechanisms’.⁶¹ Despite this, there remain key definitional, theoretical, and conceptual questions about what transitional justice is, and what it hopes to achieve, explored in Chapter 2.

Current literature on transitional justice in Uganda falls into three overlapping categories. In no particular order, the first explores the power politics of international justice; the second considers the relationship between peace and justice; and the third is concerned with the study of local perceptions and experiences of war and justice in northern Uganda. This last category takes the form of both large-scale survey-based analysis and

⁵⁶ *The Rule of Law and Transitional justice in Conflict and Post-Conflict Societies, Report of the Secretary General*, (S/2004/616) (23 August 2004), paragraph 8; Christine Bell, ‘Transitional Justice, Interdisciplinarity and the State of the ‘Field’ or ‘Non-Field’’, *International Journal of Transitional Justice*, 3 (2009), 5-27, p.9.

⁵⁷ For accounts, see Maria Avello, ‘European Efforts in Transitional Justice’, *FRIDE Working Paper* 58 (June, 2008); Leslie Vinjamuri, ‘Deterrence, Democracy, and the Pursuit of International Justice During Conflict’, *Ethics and International Affairs*, 24:2 (2010), pp.191-201.

⁵⁸ Vinjamuri, ‘Deterrence’.

⁵⁹ World Bank, *World Development Report 2011: Conflict, Security and Development*, (Washington DC: World Bank, 2011), p.17.

⁶⁰ ‘Link Between Rule of Law, Development Essential to Post-2015 Development Framework, Deputy Secretary General Tells Event on Transitional Justice’, UN Department of Public Information Press Release, 1 November 2013, <http://www.un.org/News/Press/docs/2013/dsgsm721.doc.htm> (accessed January 2014)

⁶¹ Harvey Weinstein, ‘Editorial Note: The myth of closure, the illusion of reconciliation’, *International Journal of Transitional Justice*, 5:1 (2011), p.1-10, p.1

ethnographic and field-based research. A preliminary observation is that much of the existing literature on transitional justice in Uganda appears slightly dated, as it was produced before, during, or shortly after the Juba peace talks. There is very little analysis of the trajectory that transitional justice has taken in Uganda post-Juba.⁶²

Power politics and international justice

The ICC's involvement in northern Uganda produced a body of literature examining the power politics of international criminal justice in that context. Most vociferously, Adam Branch argued that the ICC represented a dangerous form of western intervention in Uganda, because it colluded with a 'militarized security state' in 'the name of human rights'.⁶³ Branch argued that the war on terror demonized the LRA as terrorists, while a human rights discourse provided the Ugandan government with a tool, ICC arrest warrants, to further legitimise and entrench its war against the north. Other interpretations provided a more forensic account of the relationship between the Museveni regime and the ICC. Phil Clark, for example, argued that the Ugandan Government amply demonstrated the finesse with which political elites in Africa are able to 'ensure that interventions by international institutions ultimately play to their advantage'.⁶⁴

A related argument questioned the normative power of international criminal justice. In Uganda, the negotiations that led to the Juba peace talks in early 2006 saw President Museveni essentially rebuff the ICC by promising to 'guarantee' Joseph Kony's safety.⁶⁵ Indeed the Ugandan government's attitude toward the ICC has vacillated between support and refrain, raising important questions about the political dynamics of norm

⁶² Two important exceptions are firstly, Sarah Nouwen, 'Complementarity', but the focus of the book is on one element of transitional justice, criminal justice and secondly Joanna Quinn's chapter on transitional justice and peacebuilding in Uganda, see, Joanna Quinn, 'The Supposed Accountability/Peacebuilding Dilemma: The Case of Uganda', in Chandra Lekha Sriram, Jemima Garcia-Godos, Johanna Herman and Olga Martin-Otega (eds.), *Transitional Justice and Peacebuilding on the Ground: Victims and ex-Combatants*, (Abingdon: Routledge, 2013).

⁶³ Adam Branch, 'Darfur and Northern Uganda: Two Models of Intervention', essay posted on 'Making Sense of Sudan Blog', April 25th 2009, <http://africanarguments.org/2009/04/25/darfur-and-northern-uganda-two-models-of-intervention/> (accessed February 2013).

⁶⁴ Phil Clark and Nicholas Waddell 'Introduction' in Phil Clark and Nicholas Waddell (eds.) *Courting in Conflict: Justice, Peace and the ICC in Africa*, (London: Royal African Society, 2008); Phil Clark, 'Chasing Cases: The ICC and the Politics of State Referral in the Democratic Republic of Congo and Uganda', in *The International Criminal Court and Complementarity: From Theory to Practice* (Cambridge: Cambridge University Press, 2010). See also, Mahnoush Arsanjani and Michael Reisman, 'The Law-In-Action of the International Criminal Court', *American Journal of International Criminal Law*, 99 (2005), pp.385-403.

⁶⁵ This is explored fully in Chapter four.

compliance and enforcement.⁶⁶ Linked to this were important questions about the internal dynamics and priorities of the ICC itself. Clark showed that the Uganda case selection and prosecutorial strategy was symptomatic of a new and insecure institution trying to establish itself as a global player in the fight against impunity. Its investigations into LRA, but not UPDF crimes, created a perception of the ICC as fundamentally motivated by a desire to ‘get legal runs on the board in order to build support among its States Parties’.⁶⁷ The motivations of the Office of the Prosecutor (OTP) itself have therefore been just as contested as the motivations of the GoU in the Ugandan context.

Peace and justice in northern Uganda: Juba and beyond

With the exception of Mareike Schomerus’s unique ethnographic study of the Juba peace talks from the perspective of the LRA, the available literature on the talks is largely NGO material that, in keeping with contemporary debates, framed the Juba talks in terms of the peace versus justice dichotomy.⁶⁸ At the time, this was a polarized and largely theoretical debate, and the claims of each side were almost impossible to substantiate. Graeme Simpson questioned the rigidity of normative positions, arguing that coverage of the Ugandan situation betrayed a ‘reductionist’ approach to peace and justice. He called for an alternative approach, one in which ‘diverse accountability mechanisms can contribute to peace-building efforts, rather than compromise them’.⁶⁹ The call for a ‘holistic approach’ is now widespread in the NGO and academic literature on transitional justice in Uganda, but this prescription tends to assess the relationship between different transitional justice processes in apolitical and unproblematic terms.⁷⁰

⁶⁶ Ron Atkinson, ‘The Realists in Juba? An analysis of the Juba Peace Talks’, in Allen and Vlassenroot, ‘Myths’, pp. 205-223.

⁶⁷ Phil Clark, ‘Law, Politics and Pragmatism: The ICC and Case Selection in Uganda and the Democratic Republic of Congo’ in Clark and Waddell, ‘Courting’, p.44.

⁶⁸ Mareike Schomerus, *Even eating you can bite your tongue: dynamics and challenges of the Juba peace talks with the Lord’s Resistance Army*, PhD thesis, London School of Economics (2012); See for example, *Selling Justice Short: Why Accountability Matters for Peace*, Human Rights Watch, (July, 2009); Zachary Lomo, *Why the International Criminal Court Must Withdraw Indictments against the top LRA leaders: A Legal Perspective*, Refugee Law Project, (August, 2006); ‘Not a crime to Talk: Give Peace a chance in Northern Uganda’, Joint Statement by Refugee Law Center and Human Rights Focus (July, 2006).

⁶⁹ Graeme Simpson, ‘One among Many: The ICC as a Tool of Justice during Transition’, in Clark and Waddell, ‘Courting’, pp.73-79, p.74

⁷⁰ See for example, Janine Natalya Clark, ‘The ICC, Uganda and the LRA: Re-Framing the Debate’, 69:1, *African Studies*, (2010), pp.141-160; ‘Towards a comprehensive and holistic transitional justice policy for Uganda’, *Advocates Sans Frontieres* (August 2013); Bronwyn Leebaw has critiqued the assumptions of ‘holism’, see, ‘The Irreconcilable Goals of Transitional Justice’, *Human Rights Quarterly*, 30:1, (2008), pp.95-198.

Other literature exploring what happened at Juba, and the implications for transitional justice in Uganda has been legal and technical in nature. For international lawyers and legal scholars, discussions at the Juba talks around domestic prosecutions for war crimes, sparked a great deal of debate about the possible applicability of the Rome Statute's 'complementarity' provision.⁷¹ There have also been a number of reports by international human rights organisations that examine, from a narrow legalistic point of view, the agreements that were produced at Juba and the institutions that were proposed.⁷²

Field based research exploring 'local' justice and reconciliation in northern Uganda

Since the ICC referral was made public in 2004, a great deal of literature has been produced which aims either to measure and/or interpret Acholi perspectives on conflict-related justice processes. The Berkeley-Tulane Center for Human Rights has produced three cross-regional public attitude surveys aimed at recording views on the relationship between peace and justice in northern Uganda.⁷³ These have some value in that they examine responses across large geographical areas and investigate the relative significance of key variables, such as ethnicity and exposure to violence as factors in shaping attitudes.⁷⁴ Answers to standardised questions, however, do not reveal very much about the 'intersubjectively constructed concepts' that inform people's beliefs, opinions and evaluations about conflict and justice.⁷⁵ According to Gauri *et. al* an understanding of these 'sources of meaning' requires ethnographic, historical and interpretative work.⁷⁶ In

⁷¹ Nouwen's, 'Complementarity' is the most comprehensive study on this topic.

⁷² 'Uganda: Agreement and Annex on Accountability and Reconciliation Falls Short of a Comprehensive Plan to End Impunity', *Amnesty International*, (March 2008); 'Juba Agreements on Accountability and Reconciliation Raise Questions', *International Refugee Rights Initiative*, 4:3, (2008); Michael Otim and Marieke Wierda, 'Uganda: Impact of the Rome Statute and the International Criminal Court', *International Center for Transitional Justice* (2010); Human Rights Watch, 'Justice for Serious Crimes Before National Courts: Uganda's International Crimes Division' (2012).

⁷³ These have been carried out in partnership with other organisations. Pham *et. al*, *Forgotten Voices: A Population-Based Survey of Attitudes about Peace and Justice in Northern Uganda*, Human Rights Center, University of California, Berkeley and International Center for Transitional Justice (2005); Pham *et. al*, *When the War Ends: A Population-Based Survey on Attitudes About Peace, Justice, and Social Reconstruction in Northern Uganda*, Human Rights Center, University of California, Berkeley, Payson Center for International Development, Tulane University and International Center for Transitional Justice (2007); Pham *et. al*, *Transitioning to Peace: A Population-Based Survey on attitudes about social reconstruction and justice in Northern Uganda*, Human Rights Center, University of California, Berkeley (2010).

⁷⁴ For a discussion of the numerous surveys, see, Harvey Weinstein, Laurel Fletcher, Patrik Vinck, and Phuong Pham, 'Stay the Hand of Justice: Whose Priorities Take Priority?' in Shaw *et al.*, 'Localizing', pp.49-69.

⁷⁵ Varun Gauri, Micheal Woolcock and Deval Desai, 'Intersubjective Meaning and Collective Action in Developing Societies: Theory, Evidence and Policy Implications', *Journal of Development Studies*, 49:1, pp.160-72, p.163.

⁷⁶ *Ibid.*

this vein, a qualitative study was conducted on behalf of the UN Office for the High Commissioner for Human Rights in 2007, and it gathered information about public perceptions of peace and accountability. It employed a ‘narrative method’ and revealed a much more nuanced set of findings.⁷⁷ In general, however, it is the large-scale attitudinal surveys that have attracted the most attention in the wider literature. Worryingly, cursory reference to these survey findings often appear as a ‘nod’ to including the ‘local’ in research, and despite shifting contexts and attitudes, findings are presented as ‘evidence’ of timeless public perceptions and priorities, and as a barometer for the success of initiatives.⁷⁸

There exists an important body of interview-based and ethnographic work focused on the value of post-conflict ‘customary’ or ‘traditional’ justice in northern Uganda. The debate on the relative merits of this approach to transitional justice has, again, been intense, and tends to be framed in an unhelpful ‘retributive versus restorative’ justice dichotomy.⁷⁹ In 2005, after the ICC arrest warrants were announced, both the Refugee Law Project and the Liu Institute for Global Affairs, working in collaboration with the Gulu NGO Forum, published reports which challenged the appropriateness of international justice in the Acholi context. Both reports acknowledged that many of the values and processes underpinning traditional mechanisms were disrupted and displaced by the conflict, but emphasised that the ‘general’ view in northern Uganda was that traditional or localised justice practices, particularly the ritual of *mato oput*, should play a ‘significant’ role in any post-conflict phase.⁸⁰ In his book *Trial Justice*, Tim Allen, reached very different conclusions about the status of local rituals such as *mato oput*, and local perceptions of the ICC. He found that people did want legal accountability in

⁷⁷ UNOHCR, ‘Making’.

⁷⁸ Macdonald, ‘Local’, p.60; examples include, Renee Jeffery, ‘Forgiveness, amnesty and justice: The case of the Lord’s Resistance Army in northern Uganda’, *Cooperation and Conflict*, 46:78 (2011) and Cecily Rose, ‘Looking beyond amnesty and traditional justice and reconciliation mechanisms in Northern Uganda: a proposal for truth telling and reparations’, *Boston College Third World Law Journal* 28:2, (2008), p.345-67

⁷⁹ See for example, Joanna Quinn, ‘Social Reconstruction in Uganda: The Role of Informal Mechanisms in Transitional Justice’, *Human Rights Review*, 8:4 (2007), pp.389-407; James Latigo, ‘Northern Uganda: tradition-based practices in the Acholi region’, in Luc Huyse and Mark Salter, *Traditional Justice and Reconciliation after Violent Conflict, Learning from African Experiences* (Stockholm: IDEA), pp.85-123

⁸⁰ Hovil and Quinn, ‘Peace’, p.3; For similar arguments see: James Latigo, ‘Northern’; Erin Baines, *Roco Wat I Acoli: Restoring Relationships in Acholiland: Traditional Approaches to Justice and Reintegration*, Justice and Reconciliation Project, (September, 2005); Erin Baines, ‘The Haunting of Alice: Local Approaches to Justice and Reconciliation in Northern Uganda’, *International Journal of Transitional Justice* 1 (2007), pp.91-114. See also, Thomas Harlacher et. Al, *Traditional Ways of Coping in Acholi*, (Caritas: 2006), which documents numerous Acholi rituals.

Acholiland and that attitudes towards the ICC were often positive.⁸¹ Allen questioned the ‘romantic enthusiasm’ for traditional justice, arguing that rituals of healing were common in northern Uganda, but that attempts externally to fund and codify ritual processes were both dangerous and distorting.⁸² Meanwhile, Sverker Finnström’s ethnographic analysis brought some clarity to seemingly confusing and contradictory findings. Finnström described a ‘pragmatic pluralism’ in which people selected ‘in different contexts and at different historical moments, which of several strategies will best allow them to survive and reconstruct their lives’.⁸³ Finnström argued that the tendency to dichotomize ritual action against international justice systems was misdirected, because ‘Ugandans are, and always have been, realists and pragmatic pluralists’.⁸⁴

Erin Baines has similarly attempted to break down the conceptual barrier between restorative and retributive justice processes.⁸⁵ Baines has called for scholars to pay closer attention to Acholi moral and spirit worlds, and in particular, the way in which these shape the process of social healing.⁸⁶ Other attempts to address this question have continued to document Acholi rituals and call both implicitly and explicitly for these to be supported with external funds or assistance as part of the peace process.⁸⁷

Gaps that this research addresses

A reading of the extant literature on transitional justice in Uganda reveals four gaps which this research addresses. In doing so, it makes a significant empirical contribution to the literature. First, there has been very little reflective scholarly analysis examining the role that ‘justice’ issues *actually* played during the Juba peace talks. What is missing from the literature is a discussion which contextualizes and historicizes ‘justice’ at Juba, rather than abstracting it in the service of normative, theoretical arguments about the more general relationship between peace and justice. There remains a lack of focused analysis on the process leading up to the drafting of the AAR agreements, and the politics and objectives informing the positions of both the LRA and the GoU. Given

⁸¹ Tim Allen, ‘Trial’, p.96-127.

⁸² Tim Allen, ‘Trial’, p.167; For a further critique of the traditional justice agenda, see Adam Branch, ‘The Violence of Peace: Ethnojustice in northern Uganda’, 45:3 (2014), pp.608-630.

⁸³ Sverker Finnström, ‘Reconciliation grown bitter? War, retribution and ritual action in northern Uganda’, in Shaw et. al, ‘Localising’, pp.135-157, p.22

⁸⁴ *ibid*, p.153

⁸⁵ Baines was main author of the controversial ‘Roco Wat’ report.

⁸⁶ Erin Baines, ‘Spirits’.

⁸⁷ See for example, Baines, ‘Haunting’, Harlacher et. al, ‘Coping’.

that the AAR agreements have shaped the direction of Uganda's transitional justice debate and programming subsequently, this is a gap which this research addresses.

Second, there has been very little examination of donor motivations and domestic political dynamics around implementation of the AAR agreements *since* Juba. Sarah Nouwen's recent book *Complementarity in the Line of Fire*, interrogates the path that domestic criminal justice has taken, through the lens of the ICC 'complementarity' principle, but otherwise very little is known about the political trajectory that transitional justice as a 'package' of measures has taken. The ICC became more of a dormant presence from 2008 onwards in Uganda. This thesis reflects this and focuses – at the state level - on a different set of actors that came to shape transitional justice in Uganda: most notably donors, JLOS staff, and those political and legal actors involved in the new domestic War Crimes Court.

Third, whilst much has been written about forgiveness and reconciliation in the Acholi context, it is the mediated and ideal-type formulations of 'local approaches' which are foregrounded. This is the case both for supporters and for detractors of this form of transitional justice. What has received scarce attention are the less externally-mediated ways in which people and communities across Acholiland have been reconstructing the 'basic fabrics' of meaningful social, political, and economic life, against the backdrop of their lived war experiences.⁸⁸ This might involve activities that are, to some degree, structured, such as ritual, the organization of saving and loan associations or the role of local courts in dispute resolution. It might also involve less articulated processes, such as supportive discussions with neighbours during prayer groups, or social interaction during joint gardening work. It is important here to avoid what Kimberley Theidon calls a 'facile embrace of the local'.⁸⁹ It is patently evident that processes of social repair in post-conflict Acholiland can be violent and discriminatory. For example, a widespread claim amongst returnees is that they are socially and economically excluded from and rejected by their families and communities.⁹⁰ It must also be emphasized that the

⁸⁸ Alcalá and Baines, 'Editorial', p.386. Baines's study 'Reconstructing', is an important exception, but the focus here is purely on 'spirit worlds' and their role in reconstruction.

⁸⁹ Kimberley Thiedon, 'Editorial Note', *International Journal of Transitional Justice*, 3:3 (2009), pp.295-300, p.296

⁹⁰ This is explored in Chapter 8.

‘everyday’ in local spaces is neither mundane, nor stable, nor uneventful.⁹¹ In northern Uganda, stark social deprivations and continuing structural violence interfere regularly in daily life, and in unpredictable ways. However, a comprehensive account of transitional justice in northern Uganda is not possible if we ignore the myriad ways in which people and communities *actually* experience co-existence and *actually* go about reconstructing their worlds against the backdrop of the enormous injustice of a twenty-year war.

Holly Porter’s research on responses to sexual violence in Acholiland is the most comprehensive effort to date to situate responses to wrongdoing in the broader social, cosmological, and political context.⁹² This research hopes to follow Porter’s broad approach, but also that of Elizabeth Drexler, who, in the context of East Timor, warned against ‘excessive localisation’ because it risks neglecting the structural conditions that led to the violence in the first place and shapes and constrains possible options for accountability and reconciliation.⁹³ This links to the fourth and final gap in the existing literature, which is that scholars of transitional justice in Uganda have tended to direct their attention to the level of social or institutional structure that they are interested in, or would like to see transitional justice efforts address.⁹⁴ Instead, this research explores how different transitional justice conceptions and practices converge, diverge or bear any relationship at all to one another, whilst also examining how this fits with the local ‘co-existence’ situations described above.

Research design and methodology

The research design was based on a ‘within-case’ study approach. This allowed for the development of an intimate familiarity with the Ugandan context in order to discern how various political, cultural and socio-legal patterns refuted, expanded and complicated the

⁹¹ The concept of the ‘everyday’ is still relatively under-conceptualised, see Ben Highmore (ed.), *The Everyday Life Reader*, (New York: Routledge, 2002). The November 2012 special edition of the *International Journal of Transitional Justice* was entitled ‘Transitional Justice and the Everyday’.

⁹² Holly E. Porter, *After Rape: Justice and Social Harmony in Northern Uganda*, PhD Thesis, London School of Economics and Political Science (2013).

⁹³ Elizabeth Drexler, ‘Addressing the legacies of mass violence and genocide in Indonesia and East Timor’, in Alexander Hinton and Kevin O’Neill (eds.), *Genocide: truth, memory and representation* (Durham: Duke University Press, 2009), pp. 219-247, p.230.

⁹⁴ See, Geoff Dancy, ‘Impact Assessment, Not Evaluation: Defining a Limited Role for Positivism in the Study of Transitional Justice’, *International Journal of Transitional Justice*, 4:3 (2010), pp.355-376, p.361.

particular phenomenon under study: transitional justice.⁹⁵ The within-case study approach also has particular value in addressing contemporary events. As Yin argues, it deploys the same techniques as history but adds, ‘two sources of evidence not usually included in the historian’s repertoire: direct observation and systematic interviewing’.⁹⁶ The research was conducted using a range of qualitative research methods in order to ensure a comprehensive and ‘thick’ examination of transitional justice in Uganda through multiple sources of evidence.⁹⁷ Data was collected using three main techniques: semi-structured interviews; focus group discussions and participant observation. In total, eight months were spent in Uganda from April 2012 to October 2012 and from July 2013 to September 2013. Two and a half months were spent in Kampala, the capital city of Uganda, and five and a half months in Acholiland, northern Uganda. During this period, 106 in-depth semi-structured interviews were conducted with people across the Ugandan political spectrum, from donors to cabinet ministers to JLOS bureaucrats to religious and traditional leaders in Acholiland. In addition, 25 focus group discussions were conducted exploring the connections between macro-level transitional justice narratives and practices and local realities. It should be noted that ‘local’ is understood broadly as comprising the sub-state, the community and the individual. It is also used interchangeably with ‘micro-level’. The approach here borrows from Shaw *et. al’s* description of the local as a ‘standpoint based in a particular locality but not bounded by it’.⁹⁸ Such an approach guards against the mischaracterisation of local spaces as somehow remote, marginal and circumscribed.⁹⁹

The first stage of the research involved analysis of the existing secondary literature on the history, politics, and culture of Uganda since pre-colonial times. It also involved a rigorous review of the transitional justice, legal anthropology and peace-building literatures.¹⁰⁰ This included academic books and journal articles, reviews of press clippings, and a close interrogation of publicly available government, inter-governmental, and donor policy reports, NGO reports, and evaluation reports. The research findings

⁹⁵ Barbara L. Paterson, ‘Within-Case Analysis’, in Mills *et. al* (ed), *Encyclopedia of Case Study Research* (Thousand Oaks, CA: Sage Publications 2010), pp.304-324.

⁹⁶ R. Yin, *Case Study Research: Designs and Methods* (Thousand Oaks, Ca: Sage Publications, 1994), p.8.

⁹⁷ John Gerring, *Case Study Research: Principles and Practice*, (Cambridge: Cambridge University Press, 2006), p.17.

⁹⁸ Shaw *et. al*, ‘Localizing’, p.6

⁹⁹ *Ibid.*

¹⁰⁰ Research on the existing transitional justice literature was aided by a grant from the Justice and Security Research Programme at the London School of Economics, which allowed me to carry out a systematic evidence review of local experiences of transitional justice processes.

also rely on examination of a selection of primary data. Access to this data was granted in a discretionary manner and none of it is in public archives. The material included a selection of restricted documents from an archive of the Juba peace talks; a selection of restricted documents from the first trial of the War Crimes Division of the High Court of Uganda; data from the Office of the Prime Minister, on Peace, Recovery and Development Programme (PRPD) for northern Uganda; unpublished evaluation reports; a selection of archives from the Uganda People's Defence Force (UPDF) 'external security' department; and, finally, two unpublished manuscripts on Acholi history and culture.

The second stage of the research involved semi-structured interviews and focus groups. The purpose of semi-structured interviews was three-fold. Firstly to try and establish the attitudes, values, and motivations of 'public authority figures' involved in transitional justice process in Uganda. Public authority is understood here as the existing structures that perform governing functions, as well as possibly delivering other services or maintaining ideas about social duty and morality. The term can therefore refer to everything from administrative systems associated with formal state government to the influence of clan elders.¹⁰¹ Secondly the aim was to reconstruct events that have taken place since 2006, when the Juba talks began; and thirdly, to corroborate information from other sources. In total, 106 interviews were conducted with a broad range of individuals directly or indirectly involved in transitional justice debates and policy development or implementation. Purposive, non-probability, and snowball sampling was used to reduce randomness and to identify the most relevant interview subjects. Interviews were conducted with a wide range of authority figures including:

- Key Ugandan decision makers, including government ministers, MPs, government officials, as well as cultural and religious leaders.
- ICC staff, and UN and bi-lateral donor, and international NGO staff involved in transitional justice, justice sector reform, peace-building and governance policy in northern Uganda.

¹⁰¹ For studies on the concept of public authority, see: Christian Lund, 'Twilight Institutions: Public Authority and Local Politics in Africa', *Development and Change*, 37:4 (2006), pp.685-705, p.686; Kate Meagher, Tom De Herdt and Kristof Titeca, 'Unravelling Public Authority: paths of hybrid governance in Africa', *IS Academy Research Brief*, 10 (March, 2014).

- Local leaders in Acholiland who make up the justice and security network at village, parish, and sub-county level. This included local councillors; elders; religious and traditional figures; witch doctors and NGO mediation workers.

The main problem encountered with the interview approach was how far it was possible to judge the extent to which interviewees were misrepresenting their own positions and versions of events. Politicians and community leaders were prone to shaping their accounts in such a way as to either ‘inflate or minimise their role in a process’.¹⁰² This was probably to preserve or enhance reputational capital, but a tendency towards exaggeration or circumvention, depending on the issue, is also a rather human way of interacting.¹⁰³ Another challenge was that in some cases the interview process involved documenting ‘instant histories’.¹⁰⁴ Interviews with policy makers sometimes took place in the immediate aftermath of a particular event, (the lapsing of the Amnesty Act, or the trial of Thomas Kwoyelo, for example), where the effect on public relations was very much at the forefront of the minds of respondents. This was more the case with donor staff than with government officials, who tended to be very candid. In other cases respondents were asked about things that had happened further back in history, and they were simply unable to recall enough to respond to questions in depth.

These issues highlight the importance of triangulation, which was used not only to judge the validity and credibility of the information that was gathered from interviews, but also to bring to light the plurality of different narratives that might exist on the same set of events and/or policies. Indeed, while data collected during interviews should always be treated with circumspection, and should always be interpreted in light of the respondent’s own background, potential biases and possible political agendas, the very fact that answers may appear skewed or questionable provides a rich source of material which can tell us important things about how and why history and memory are constructed.

¹⁰² Oisín Tansey, ‘Process Tracing and Elite Interviewing: A Case for Non-probability Sampling’, *Political Science and Politics*, 40:4 (2007), p.10. It was particularly striking how many individuals claimed an absolutely pivotal role in convincing Joseph Kony to allow the LRA to take part in the JPT.

¹⁰³ Ibid, p.10. Ramazan Aras et, al, *Documenting and Interpreting Conflict Through Oral History: A Working Guide*, Colombia University Center for Oral History (2013).

¹⁰⁴ Ibid

In addition to the interviews, the fieldwork involved a series of twenty-five focus group discussions in five research sites across Acholiland: four rural and one urban. The sites were selected on the basis of variations in the following criteria: (i) distance from Gulu town, the main provincial town and NGO hub of the Acholi sub-region; (ii) sites of alleged massacres during the LRA conflict (both alleged LRA and UPDF massacres); (iii) sites where ‘victims’ and ‘survivor’ associations were active; (iv) sites with notable on-going land disputes; (v) sites with dedicated NGO programmes related to transitional justice and reconciliation. The various research sites had different combinations of these characteristics. The idea was to select areas with varying dynamics to try to build a more nuanced picture of post-conflict life in Acholiland. 85 per cent of people in the Acholi sub-region are rural dwellers, and to reflect this, four of the five research sites were in rural areas.¹⁰⁵ For confidentiality reasons, the precise locations of the five research sites are not revealed. In the text each site is referenced according to the administrative district it lies in.

In each research site group discussions were divided along the following lines: (i) women (mixed ages) (ii) men (‘older’)¹⁰⁶ (iii) youth (mixed gender) (iv) male LRA returnees (mixed ages) (v) female LRA returnees (mixed ages).¹⁰⁷ A total of 25 group discussions were carried out, with an average of six participants per group. The kinds of responses elicited varied considerably depending on age, sex, and experiences during the war, although common themes and sentiments also emerged. These differences and similarities were important to capture. The style of the groups was informal and conversational. Participants were not asked to fill out surveys, and were not required to provide categorical answers to specific questions. At the beginning of the sessions the groups were asked broad questions about life since the end of the conflict; whether they felt they had experienced wrongdoing during the conflict; current disputes and avenues for redress, and how people are moving on with their lives. Towards the end of the sessions they were asked to comment on issues related to transitional justice if these had

¹⁰⁵ Ron Atkinson and Julian Hopwood, *Land Conflict and Monitoring Mapping Took for the Acholi Sub-region*, United Nations Peacebuilding Programme and Human Rights Focus, (2013), p.24.

¹⁰⁶ The UN defines youth as those aged between 15-24 but in Uganda it is also a socially constructed concept. As Blattman and Annan note, ‘many in northern Uganda use the approximate ages of 14-30 to define, ‘youth’, but transition to adulthood is less the passing of an age threshold than it is the acts of taking a spouse and having a child, see ‘SWAY’, p.3.

¹⁰⁷ In initial trials, groups were not divided according to age of gender but it soon became clear that women and younger men were remaining quiet while senior males dominated the discussion. Groups were divided up in the manner highlighted above after discussions with local researchers, taking into account both time and resource constraints.

not already come up spontaneously. All focus group discussions were carried out in Acholi, and simultaneously translated into English with the assistance of a research assistant.

The focus group participants were selected with the help of a local leader. In all but one research site this was the head of the village council (Local Councillor I); in the remaining site it was the head of the parish council, (Local Councillor II). Local leaders were asked to gather an equal number of men, women, and 'youth,' for a discussion about village life since the end of the conflict and the disbandment of the camps. It was stated explicitly that these individuals need not have an 'identity' as a survivor/victim or perpetrator; this was in order to avoid extreme or deviant case sampling. Group discussions with returnees were undertaken at the District level, with the assistance of the District Peace and Reconciliation Team. This was in order to ensure a more anonymous and sensitive process. In each site, group discussions were followed by key informant interviews with local leaders, as well as with traditional and religious leaders in the area. These interviews were carried out in order to get a clearer picture of local dynamics from the local public authority perspective.

There are limitations to the focus group approach. Two were particularly apparent during this research. Firstly, using purposive and snowball sampling for focus group discussions means that the researcher is indirectly involved in 'developing and managing the initiation and progress of the sample'.¹⁰⁸ One of the dangers with this type of sampling, and using local leaders to help with identification of participants, is that the researcher is recommended people with similar characteristics or experiences; or people who are felt to be more 'interesting'.¹⁰⁹ It is therefore 'incumbent on the researcher to ensure that the initial set of respondents is sufficiently diverse for the sample not to be skewed excessively in one particular direction'.¹¹⁰ This was done by building a relationship with the person who helped select the participants, sitting down with (usually) him informally, and talking, often for a long time, about village life and the broad parameters of the research project.

¹⁰⁸ Lynne Millward, 'Focused Interviews', in Michael Lewis Beck, et. al, *The Sage Encyclopedia of Social Science Research Methods* (2004), pp. 107-123.

¹⁰⁹ Tansey, 'Process', p.19.

¹¹⁰ Ibid.

In the focus group discussions, the questions being asked were likely to involve private reactions and deep detailed responses. The risk for the researcher is being drawn towards the stories or versions of events that are the most dramatic or striking. A conscious effort was therefore made to give equal time and attention to those whose responses may appear more mundane. For example, while some people were strongly of the opinion that northern Uganda was 'still at war', particularly in relation to tensions over land, or 'time-bombs' relating to unresolved crimes committed during the conflict, others were of the opinion that life was now on the right track, that things were much better, and that what happened during the twenty year conflict should simply be forgotten so that people can move on. It is important to follow up both kinds of responses; although the former may appear more striking, the latter is equally revealing of transitional dynamics and coping techniques in the aftermath of violence and war.

Semi-structured interviews were either recorded, with a tape recorder, or in note form, depending on the wishes of the interviewee. All focus group discussions were tape recorded. All focus group participants were granted anonymity. Interviewees were given the option of anonymity. All respondents were asked to sign an informed consent form, approved by the King's College ethics committee, which outlined the purpose of the research, anonymity protocols and data storage methods.

The third strand of research involved participant observation. A research associate affiliation with the Refugee Law Project at Makerere University (RLP), during the fieldwork period in Uganda provided an insight into the workings of an NGO/advocacy group, funded in part by international donors, which has been closely involved in transitional justice issues since the outset in Uganda. It also allowed access to relevant meetings, workshops, training, and community outreach in Kampala, Gulu, and across rural Acholiland. The opportunity to observe meetings attended by civil society, bureaucrats, donors and occasionally politicians and local councillors, discussing transitional justice issues, provided important insight into the political space where transitional justice policy and programming was being discussed and shaped. It also provided an opportunity to witness first hand the ways in which transitional justice promoters and practitioners engaged with affected communities; to observe how this interaction actually took place and what seemingly inscrutable terms such as 'capacity building', 'local partnerships' and 'sensitisation trainings' looked like in practice. Using this method had its limitations, however. Attendance at particular 'events', such as

meetings and workshops did not allow for a far-reaching understanding of the participants involved and was more of a reflection of their actions and behaviour in particular settings and particular roles. Triangulation of methods enabled the comparison of participant observation during these meetings with interview and focus group data.

While this was not an orthodox ethnographic study, the research approach was informed by ethnographic methods and techniques.¹¹¹ Ethnographic methods were deemed useful because they allow the researcher to explore the subjects' frames of reference whilst remaining as open as possible to different understandings and interpretations of the world.¹¹² Meaning was therefore probed for through 'thick descriptions' of people's views and actions, and the context that they inhabit.¹¹³ An ethnographic approach, and interview-based, focus group and participant observation methods were used because it was felt that this was the most effective way to generate data that could provide some insight into the 'inherently relational' and 'inherently contested' nature of the socio-legal dynamics being explored.¹¹⁴ The methods used in this research were designed to offer an interpretivist approach to understanding how transitional justice is constructed and experienced *in context*: what McGovern called the 'extensive and intensive qualitative research required to obtain context-specific knowledge'.¹¹⁵ It was felt that if such knowledge could be generated, it would allow for a more robust and textured assessment of the reality of transitional justice on the ground than that offered by the purely theoretical literature or that based on positivist, large-n comparative research using datasets.¹¹⁶

¹¹¹ The following texts were engaged with closely during the research design phase: Paul Atkinson and Martin Hammersley (eds.), *Ethnography: principles in practice* (London: Routledge, 1995); Martin Hammersley, *What's wrong with ethnography? Methodological explorations* (London: Routledge, 1992); Barbara Tedlock, 'Ethnography and Ethnographic Representation', in Norman K. Denzin and Yvonna S. Lincoln (eds.) *Collecting and Interpreting Qualitative Materials* (Thousand Oaks: Sage Publications, 2003), pp.499-541; Sara Delamont, 'Ethnography and Participant Observation,' in Clive Seale (ed.) *Qualitative Research and Practice* (London: Sage, 2004), pp.217-29.

¹¹² Jane Singer, 'Ethnography', *Journalism and Mass Communication Quarterly*, 86:1 (2009), pp.191-198, p.191

¹¹³ Annette Lareau and Jeffrey Shultz, 'Introduction', in Annette Lareau and Jeffrey Shultz (eds.), *Journeys Through Ethnography: Realistic Accounts of Fieldwork* (Boulder: Westview Press, 1996), pp.1-7

¹¹⁴ Brian Tamanaha, Caroline Sage and Michael Woolcock (eds.), *Legal Pluralism and Development: Scholars and Practitioners in dialogue* (Cambridge: Cambridge University Press, 2012), p.7.

¹¹⁵ cf. *ibid.*

¹¹⁶ For a critique of the lack of an evidence base in transitional justice, see Thoms *et al.*, 'State-level'; Van Der Merwe *et. al.*, 'Assessing' and Macdonald, 'Local'.

Primary data was analysed using a ‘general inductive approach,’ which allowed research findings to emerge from the identification of frequent and dominant themes.¹¹⁷ Transcripts were read several times to identify themes and categories, and both ‘emic’ and ‘etic’ approaches were used to interpret the material gathered. In social science, the ‘emic’ approach aims to describe a particular culture or political system, ‘in its own terms’, while the ‘etic’ approach provides a more explicitly ‘outside’ perspective which links cultural and political practices to external phenomena that ‘may not be salient to insiders’.¹¹⁸ An initial manual emic coding frame was developed in an attempt to understand ‘participants’ indigenous meanings of real world events’ and to examine things ‘through the eyes of members of the culture being studied’.¹¹⁹ Thus tentative labels were created for chunks of data that appeared to signify common patterns. Labels such as ‘courts’, ‘friendship’, ‘mercy’ and ‘social loss’ were understood as the ‘nouns and verbs of a conceptual world’ and part of the analytic process was to link these categories to the social phenomena that they described, such as institutions, social relations or social outcomes.¹²⁰ A second, ‘etic’ coding frame was then developed from the scholarly literature and prior research. The etic coding was based on the conceptual framework of transitional justice in an attempt to analyse the relevance and experience of TJ to the Ugandan setting. Thus research findings were to some degree influenced by research objectives, however, they did arise directly from analysis of the raw data, rather than from existing models or theory. In the text, where quotes are given it is because they are representative of broader opinion and dominant themes and where this is not the case, it is explicitly stated.

A particularly challenging issue that arose in interviews and focus groups, was around identifying salient understandings of essentially contested concepts such as ‘justice’. There exists some debate in the literature about the need for sounder conceptual architecture to help us understand and even ‘operationalise’ notions such as transitional

¹¹⁷ The analytic approach was ‘generic’ rather than being located in specific approaches associated with analyzing qualitative data, such as grounded theory or content analysis, even though the inductive approach is also evident in these forms of data analyses. See, David R. Thomas, ‘A general inductive approach for analyzing qualitative data’, *American Journal of Evaluation*, 27:2 (2006), pp.237-246.

¹¹⁸ Michael Morris, Kwok Leung, Daniel Ames, and Brian Lickel, ‘Views from Inside and Outside: Integrating Emic and Etic Insights About Culture and Justice Judgement’, *Academy of Management Review*, 24:4, (1999), pp.781-796, 781; Thomas Headland, Kenneth Pike and Marvin Harris, *Emics and Etics: The Insider/ Outsider Debate* (London: Sage, 1990).

¹¹⁹ Both quotes are taken from James Olive, ‘Reflecting on the Tensions between Emic and Etic Perspectives in Life History Research: Lessons Learned’, *Socialforschung* 15:2, (2014), p.9.

¹²⁰ Steve Borgatti, *Introduction to grounded theory* (1996) available at: <http://www.analytictech.com/mb870/introtogt.htm>

justice.¹²¹ Indeed two successive UN Secretary Generals, Kofi Annan and Ban Ki Moon have referred to the need to ‘articulate a common language of justice’ in their reports on transitional justice and the rule of law.¹²² The supposition that informed the design of this research, however, is that justice exists as a ‘notion’ rather than a discrete goal, and will probably never have universal meaning. There will always be multiple ‘conceptions’ of what justice is.¹²³ In many places where transitional justice is operational in some form, the very word ‘justice’ has no direct translation, and even where it does, individual and group ideas about what justice actually means can range from access to health care to the ability to pay school fees or for a decent burial.¹²⁴

The ‘translateability’, universality, and relativity of transitional justice conceptions and practices was a pressing and uncomfortable question. In Acholiland there is no word for ‘justice’. The translation most commonly used is ‘*Ngol matir*,’ which literally means to ‘cut straight,’ and is used to describe the process by which a fair judgment has been made.¹²⁵ People are rarely familiar with the term transitional justice. This did not mean that associated concepts of accountability, truth, and reconciliation were not present, but they did not exist under this linguistic or conceptual banner. This was a particularly important consideration for fieldwork conducted away from government institutions, NGOs, and donor offices. The starting point during fieldwork with communities in Acholiland was therefore to examine people’s understandings of *injustice*, and start from there. Thus, during focus group discussions people were asked to reflect on instances during and since the war when they or people they knew, were *tero I yoo matir* which is a locally recognised way of saying, ‘not being treated in the right way’. It was felt that this kind of approach would allow for a much richer discussion to develop than one premised from the outset on imposed definitions and prescriptions.

Chapter outline

¹²¹ See, for example, Thoms et. al ‘State-Level’.

¹²² See UNSG, ‘Transitional’ (2004); UNSG, *The Rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary General to the Security Council* (S/2011/634) (2011).

¹²³ Dancy, ‘Impact’, p.368.

¹²⁴ Macdonald, ‘Local’, p.8

¹²⁵ Holly Porter’s anthropological work on understandings of the concept of ‘justice’ in Acholiland inform the approach taken in research design. See, Porter, ‘After Rape’, especially pp. 98-106 for a discussion of the ‘meaning of justice’.

This thesis empirically examines the political and socio-legal dynamics and trajectory of transitional justice in Uganda since 2006. It explores the full range of processes put forward in the AAR: domestic prosecutions for war crimes, truth-telling, reparations and support for traditional justice. Each is explored through the different socio-political perspective of key actors involved in transitional justice construction and implementation as well as through the lens of the war affected communities for whom these processes were ostensibly designed to benefit. The first two chapters establish the conceptual and analytical framework. Chapter 2 examines the genesis of the dominant liberal transitional justice paradigm and its normalization as a form of conflict and post conflict intervention. It explores the ‘migration’ of transitional justice from post-authoritarian to conflict and post-conflict settings and its incorporation into the peace-building and development programmes of international aid agencies and donors. It goes on to propose an analytical approach towards exploring the dissonance between the normative *oughts* of the orthodox transitional justice paradigm and the messy complex realities of transitional justice as it is debated and as it happens.

Chapter 3 provides the context against which we can historicise and ‘re-politicise’ Acholiland as a local space in which transitional justice – in its varying forms - has both emerged and intervened. It charts the history of legal pluralism, social order, state power and conflict in Acholiland and lays the groundwork for subsequent chapters by highlighting important historical and contemporary themes around local justice conceptions and provision that complicate existing transitional justice narratives and practices in the sub-region.

The emergence of a transitional justice framework for Uganda is explored in Chapter 4 through an in-depth examination of the justice debate between the GoU and the LRA/M during the Juba peace talks. The chapter explores the motivations of both GoU and LRA/M actors at Juba. It argues that while the AAR agreements may have represented progress on paper, they were based on hard-boiled, expedient political calculations about the best way to both avert and instrumentalise justice issues during difficult negotiations around a broader political settlement that neither side was entirely committed to.

Chapters 5, 6, and 7 chart the trajectory of transitional justice debate and practice *since* Juba. Chapter five explores the way in which transitional justice at the state-level became a donor driven affair after the Juba talks. In particular it examines – in context - the technical and ‘post-political’ approach that donors adopted, focused mainly on institutional strengthening and justice sector capacity building. It posits that the donor approach was easily out-manoeuvred and instrumentalised by Ugandan political elites and explores this dynamic in relation to the neglected elements of the AAR: truth, reparations and traditional justice. Chapter six explores an area where there has been some tangible activity: the International Crimes Division of the High Court of Uganda. This chapter analyses the court’s first and only war crimes trial to date, that of former LRA member Thomas Kwoyelo. It shows how the trial highlighted the complex legal, political and institutional conflicts between prosecution and amnesty for war crimes and analyses why the political leadership of the state refrained from expressing a coherent position on this issue. In order to provide the fullest possible picture of the Kwoyelo trial, this chapter also interweaves an analysis of how the trial was interpreted ‘on the ground’ in Acholiland, both by affected communities and by the local leadership.

Chapter seven interrogates the role of the powerful ‘forgiveness’ and ‘reconciliation’ agendas that are often misleadingly described as comprising *the* ‘Acholi’ approach to transitional justice. The chapter examines the way in which forgiveness and reconciliation agendas - mediated by religious leaders and ‘traditional’ leaders, often with support from donors - have been experienced, re-shaped and contested in Acholiland. Chapter Eight provides an analysis of every day ‘justice in transition’ in northern Uganda, and how this relates to the meta-narratives and programmes of transitional justice. In particular, it explores the most significant means by which social relations are being constructed and re-constructed in the aftermath of such a devastating conflict and how these transitional realities challenge the prevailing assumptions that inform existing approaches towards transitional justice promotion and practice.

2. Unraveling transitional justice

Introduction

This thesis is an attempt to understand, empirically, how transitional justice has been constructed, implemented, and experienced in the Ugandan context since 2006. This chapter explores the emergence and evolution of the dominant liberal conception of transitional justice, which has played an important role in post-conflict discourse in Uganda. Espoused by UN agencies and western aid donors, this orthodox position promotes the adoption of justice and accountability instruments that will orient society towards a 'liberal peace'. This chapter lays the groundwork for a clearer conceptual understanding of this dominant form of transitional justice thinking in contemporary international policy. It charts the emergence of transitional justice as a specific political and academic project in the late 1980s and early 1990s against a background of tectonic shifts in the global political landscape, and goes on to explore its trajectory over the last two and a half decades. There is a particular focus on two important developments: the first was the migration of transitional justice from 'post-authoritarian' to 'post-conflict' settings and the second was its incorporation, by the mid-2000s, into the international peace-building and development architectures.

Transitional justice, as will be explored, has developed as a field with certain core normative assumptions and practices which inform its application. As a vague but discernable notion that past wrongs should be addressed in the service of a better future, proponents have essentially viewed transitional justice and its attendant processes as elastic and 'post-political'. The dominant liberal conception of transitional justice that has emerged, particularly in the last decade, is a socially constructed way of identifying, interpreting and resolving global problems and this has resulted in the confident and standardized application of transitional justice to a wide range of contexts. As this chapter goes on to argue, while the 'toolbox' approach towards transitional justice, in both conflict and post-conflict settings is often advanced by international donors and aid agencies as an apolitical 'technology',¹ it remains a deeply normative and political project. Abdullahi Ahmed An-Na'im convincingly sums up its logic:

¹ Sharp, 'Interrogating', p.158

‘Let us promote an intermediate level or degree of ‘justice’, as we know or accept it to be, until the situation is ready for the next phase toward the ultimate fulfillment of our vision of justice as it should be practiced everywhere in the world’.²

Finally, this chapter explores the ways in which the normative and intellectual superstructure of liberal notions of transitional justice have – on application - been appropriated and re-imagined by a range of different people and groups, from politicians to local leaders to NGOs, to communities affected by forms of violence. This lays the groundwork for some of the dissonances that characterise the Ugandan case, explored in more detail as the thesis progresses. The chapter ends with an appeal to distinguish, conceptually, between ‘transitional justice’, as a normative project infused with a teleological impulse to pull post-conflict states in the direction of liberal governance reforms and ‘justice in transition’ which comprises the plurality of ways in which people, in local spaces, seek to restore and reconstruct relationships, and social fabrics, in the lingering aftermath of atrocity.

The emergence of transitional justice

The literature on transitional justice provides a vast choice of historical starting points, ranging from ancient Greece to the democratic transitions of the late 1980s.³ This is symptomatic of what has been referred to as the ‘severe theoretical poverty’ that afflicts the field.⁴ The approach in this chapter is to depart from the notion of transitional justice as a ‘perennial problem’ and a ‘metaphysical enterprise’, while at the same time taking account of the important historical, political, and social residues that provide the context for its emergence.⁵ Transitional justice, it will be argued, emerged as a term and a distinct political project against the backdrop of a wave of political transitions that

² Abdullahi Ahmed An-Na’im, ‘Editorial Note: From the Neocolonial ‘Transitional’ to Indigenous Formations of Justice’, *International Journal of Transitional Justice*, 7:2 (2013), pp.197-204, p.197.

³ See Jon Elster, ‘Closing’, p.7; Gary Bass, *Stay the Hand of Vengeance* (Princeton: Princeton University Press, 2000).

⁴ Phil Clark, ‘Tensions in Transitional Justice’ in Phil Clark and Zachary Kaufman (eds.), *After Genocide: Transitional Justice, Post-Conflict Reconstruction and Reconciliation in Rwanda and Beyond*, (London: Columbia University Press, 2009).

⁵ Ruti Teitel, ‘Transitional Justice Genealogy’, *Harvard Human Rights Journal* 16 (2003), pp.69-95 at p.89; Arthur, ‘Transitions’, p.328.

began in the mid-1970s.⁶ At the same time, it derives its authority and much of its conceptual basis from the international legalist paradigm that emerged after WWII.⁷

Modern transitional justice has its roots in the Nuremberg trials, but from the end of the 1940s to the mid-1980s amnesty and silence were considered the ‘catalyst for reconciliation *par excellence*’.⁸ State-sanctioned silence was the outcome of negotiated compromises between the successor elites in post-Franco Spain and post-Khmer Rouge Cambodia. In Pinochet’s Chile, impunity was established through formal amnesty legislation in the late 1970s. During this period the international criminal, humanitarian, and human rights legal apparatuses which exist today, were being debated, established, and codified, but the Cold War political equilibrium created a hiatus in enforcement.⁹ Indeed, human rights *practices*, at home and abroad, would often be a matter of considerable embarrassment should they be subjected to full international scrutiny. As far as powerful Cold War states were concerned, international criminal, human rights, and humanitarian law, comprised a ‘low-cost’ declaratory commitment, one that they did not intend to activate.¹⁰

Transitional justice, when it emerged, was the product of a particular historical and political moment. Military regimes in Latin America and communist regimes in Central and Eastern Europe were collapsing. These countries had different histories, but they shared a key challenge: what to do about the ‘former torturers persisting in their midst’.¹¹ It was not a straightforward question, because, as Lawrence Weschler, who was instrumental in the creation of the concept predicted, ‘good people will disagree on how

⁶ This is a reference to what Samuel Huntington called democracy’s ‘third wave’. According to this theory, the third wave began in southern Europe in the mid 1970s (Portugal, Spain, Greece) and also included the end of military rule in Latin America in the 1980s; liberalization in Asia Pacific countries (Phillipines, South Korea) from the mid 1980s, and the fall of communist regimes in East Europe after the collapse of the Soviet Union. See Huntington, ‘Third’.

⁷ Ruti Teitel, ‘Transitional’, p.70; Pierre Hazan, ‘Judging War, Judging History’: Behind Truth and Reconciliation (Stanford: Stanford University Press, 2010).

⁸ Hazan, ‘Judging’, p.38. Trials of the Junta leaders in Greece in 1974 were an important exception.

⁹ Rachel Kerr and Erin Mobekk, *Peace and Justice: Seeking Accountability after War* (Cambridge: Polity Press, 2007). The following regimes and laws enacted during this period: The Universal Declaration of Human Rights (1948), the Geneva Conventions (1949); Additional Protocols to the Geneva Conventions (1977); Convention on the Punishment and Prevention of the Crime of Genocide (1949); International Covenant on Economic, Social and Cultural Rights (1966); International Covenant on Civil and Political Rights (1966); Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1984). For the full list of the core international human rights instruments, see <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx> (accessed 02.03.13).

¹⁰ Jack Donnelly, ‘International human rights: a regime analysis’, *International Organization*, 40:3 (1986), pp. 599-639

¹¹ Quoted in Arthur, ‘Transitions’, p.22

that holding to account ought to proceed in the context of real life, often exceptionally precarious political situations'.¹² Transitional justice was not just about the 'moral obligation' and 'legal duty' to prosecute.¹³ The emphasis was also on 'prudence'.¹⁴ It was about striking the right balance between legitimate claims for legal accountability for human rights abuses, and the aspiration for a peaceful transition from authoritarianism to democracy.

Paige Arthur, in her impressive conceptual history of transitional justice, argues that in the late 1980s and early 1990s transitional justice emerged at the international level as a result of a set of interactions that took place between human rights activists, lawyers, legal scholars, policy makers, journalists, donors, and comparative politics experts, all of whom were 'concerned with human rights and the dynamics of transitions to democracy'.¹⁵ During a series of conferences, the first of which was held by the Aspen Institute in 1988 and funded by the Ford Foundation, participants from different continents began to discuss the question of violence committed by agents of the state in former totalitarian regimes.¹⁶ A broad consensus was reached on the various measures that might be employed to address these transitional problems: Commissions of Inquiry, prosecutions, truth-telling, lustration, vetting and compensation for harms were all discussed. Each measure was articulated as having a dual function. Firstly, it must ensure an acceptable measure of justice for victims, and secondly it must facilitate a transition from authoritarianism to liberal democracy as smoothly as possible. So, for example, as the Aspen Conference report noted, prosecutions were intended to fulfill a 'duty owed to victims,' but also to 'provide a unique means by which to assert

¹² *ibid*

¹³ An 'anti-impunity' movement sprung up in the late 1970s that was more focused on the obligation and legal duty to prosecution. It was particularly focused on crimes committed during the 'dirty war' periods of the 1970s and 80s in Central America and resulted in proliferation of transnational litigation. This movement, argues Paige Arthur, had a different 'history and conceptual background', see Arthur, 'Transitions', p.363. The anti-impunity movement and its debates about its impact are explored in, Naomi Roht-Arriaza, *The Pinochet Effect: Transitional Justice in the Age of Human Rights* (Philadelphia, Pennsylvania Studies in Human Rights, 1996); Ellen Lutz and Kathryn Sikkink, 'The Justice Cascade: The Evolution and Impact of Foreign Human Rights Trials in Latin America', *Chicago Journal of International Law*, 2:1 (2001); Cath Collins, 'Grounding Global Justice: International Networks and Domestic Human Rights Accountability in Chile and El Salvador', *Journal of Latin American Studies*, 38 (2006).

¹⁴ Arthur, 'Transitions', p.323; Leslie Vinjamuri, 'Deterrence'.

¹⁵ Arthur, 'Transitions', p.324

¹⁶ Other significant Conferences on this theme were the Charter 77 Foundation Conference, 'Justice in Times of Transition' in Salzburg in 1992 and Institute for Democracy in South Africa (IDASA); conference, 'Dealing with the Past', in 1994. Paige Arthur, in 'Transitions', includes an appendix which lists the participants at each conference; Hazan, 'Judging', p.31

democratic values'.¹⁷ Similarly, truth-telling efforts must 'respond to the demand of justice for victims' while also ensuring that new governments 'do not absorb an institutional tradition which has not expunged its most objectionable aspects...'.¹⁸ This dual moral-utilitarian logic became the loose formula of transitional justice: a specific politico-legal project developed by an epistemic community concerned with both individual human rights and transitions to democracy.¹⁹

By 1995, when Neil Kritz's four-volume compendium, *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*, was published, the idea of transitional justice and its practices was already relatively well understood. It was, argues Paige Arthur:

'presented as deeply enmeshed with political problems that were legal-institutional and, relatively short term in nature. So short term in fact, that they could be dealt with specifically during a "transitional" period.'²⁰

This is a significant point that requires explanation. At the outset, the developing transitional justice field was informed by the 'transition' paradigm, an intellectual framework that was developed by an influential group of political scientists in the US during the 1980s. At the time when President Ronald Reagan was talking about a 'democratic revolution on a global scale', the 'transitologists,' as they became known, sought to explain and make sense of the multiple and heterogeneous processes by which states as different as Mauritania, Mongolia and El Salvador were undergoing political liberalisation.²¹ The 'Transitions Project' was overseen by comparative political scientists Guillermo O'Donnell and Philippe Schmitter, who also contributed to Kritz's compendium on transitional justice. Focusing on cases in Latin America and Southern Europe, they published a seminal work in 1986, *Transitions from Authoritarian Rule*.²² This rejected the structural thinking of the modernization theorists, who argued in the 1960s that 'political development' would be the gradual product of long-term, socio-economic stages.²³ The Transitions Project developed a new theory: liberal democracy could be

¹⁷ *State Crimes: Punishment and Pardon: Papers and Report of the Conference, November, 4-6, 1988, Wye Town, Maryland*, (Maryland: The Aspen Institute, 1989), p.3.

¹⁸ Zalaquett, 'Confronting Human Rights Violations Committed by Former Governments: Principles Applicable and Political Constraints' in 'State Crimes' p.31.

¹⁹ Annie Bird, *US foreign policy on transitional justice*, PhD Thesis, London School of Economics (2012), also uses the idea of 'epistemic communities'.

²⁰ Arthur, 'Transitions', p.333

²¹ Hazan, 'Judging', p.31

²² O'Donnell and Schmitter, 'Transitions'.

²³ In the 1960s policy makers and political scientists, for example W.W Rostow did not talk of 'transitions to democracy' but rather of socioeconomic modernization as a precondition of an evolutionary process of

established in almost any country through ‘a shortened sequence of elite bargaining’ and ‘legal-institutional reforms.’²⁴ In their tentative conclusions, Schmitter and O’Donnell argued that central to a successful transition was the moral and practical need to ‘settle a past account’ but ‘without upsetting a present transition’.²⁵ Confronting past abuse in a way that was acceptable to the interests of the elites negotiating the transition would, it was argued, go some way to combating impunity while also averting potential coups and maintaining peaceful order.²⁶ Borrowing these ideas and building upon them, transitional justice developed as a powerful normative discourse. It was assumed that transitional justice processes would develop narratives about past violence, settle accounts and demonstrate the truth. This in turn would play a powerful role in fostering social repair and consolidating the rule of law.²⁷

Legal-institutional reforms were a response both to the types of individual abuse that human rights activists were focused on, *and* to the sort of transition that comparative political scientists envisaged.²⁸ Thus transitional justice emerged as a self-validating paradigm, it was ‘a response to a new set of problems, and the means of legitimating practices used to respond to those problems’.²⁹ In Latin America and Central and Eastern Europe these practices were quickly taken up and locally driven support for them was widespread, particularly amongst burgeoning domestic anti-impunity movements.³⁰ Indeed, as one Chilean lawyer with long experience in a local NGO noted, ‘during the 70s and 80s, we’d be on the phone to Amnesty International every other day,

political development; See Arthur, ‘Transitions’, p.337; see also W.W Rostow, *The Stages of Economic Growth* (Cambridge: Cambridge University Press, 1990).

²⁴ Arthur, ‘Transitions’, p.338

²⁵ O’Donnell and Schmitter, ‘Transitions’, p.28; Arthur, ‘Transitions’, p.347

²⁶ O’Donnell and Schmitter, ‘Transitions’, pp.28-31.

²⁷ For a good summary of some of the key arguments that emerged in the scholarly literature, see Vinjamuri and Snyder, ‘Advocacy’. The legalist argument, which remains committed to the ‘moral absolutism’ of universal human rights standards, maintains a weary skepticism of ‘softer’ approaches to justice, lamenting the decision to forgo prosecutions in favour of truth-seeking methods as understandable but inadequate. Ruti Teitel, has argued that Cold War justice – linked as it was to nation-building, did not reflect the ‘ideal rule of law’ and that transitional jurisprudence reflected a ‘conception of justice that was imperfect and partial’, see Teitel, ‘Transitional’, p.76.

²⁸ Teitel has argued that transitional justice is distinctive in that it is both backward-looking and forward-looking: see, for example, Ruti Teitel, ‘Rethinking Jus Post Bellum in an Age of Global Transitional Justice’, *The European Journal of International Law* 24:1 (2013), pp.335-342.

²⁹ Arthur, ‘Transitions’, p. 238.

³⁰ For an interesting account of domestic anti-impunity movements in both Chile and El Salvador, see Cath Collins, *Post-transitional Justice: Human Rights Trials in Chile and El Salvador* (Philadelphia: Penn State University Press, 2010).

sending them papers, smuggling documents out to them whenever we could'.³¹ The most common approach to transitional justice in Latin America was to combine limited prosecutions with a truth commission, or to prohibit prosecutions altogether.³² In Central and Eastern Europe truth commissions were less appealing, because the use of history by various predecessor governments was itself seen as a 'destructive dimension of Communist repression'.³³ In many of these countries the main response of the successor regime was to pass lustration laws as part of the wider 'de-communization' campaigns, whilst also enacting legislation that guaranteed victims access to the historical record.³⁴ What was clearly neglected in the emerging process was any discussion about the broader structural causes of human rights violations, and the possibilities for reform at the socio-economic level. Given the 'end of history' mentality that defined the political moment, the de-radicalisation of the Left in the 1970s, and the post-Cold War faith in the liberalizing qualities of market democracies, this is probably not surprising.³⁵ It is, however, notable for two reasons. Firstly, because it supports the argument that transitional justice is largely a product of post Cold War political liberalism,³⁶ and secondly because African intellectuals continued to identify the colonial legacy and the Cold War predicament of one-party regimes squarely with the logic of socio-economic crimes. The Ugandan scholar (then Minister of State), Mahmood Mamdani, who himself had attended the 1988 Aspen Conference, later argued that it was 'social suffering' rather than 'individual human rights violations' that characterized the great colonial crimes of economic expropriation, exploitation, and inequality, and which continued to shape the

³¹ Interview conducted by Cath Collins, cited in Cath Collins, 'Grounding Global Justice: International Networks and Domestic Human Rights Accountability in Chile and El Salvador', *Journal of Latin American Studies*, 38:4 (2006), 711-738, p.715.

³² Vesselin Popovski and Monica Serrano, *After Oppression: Transitional Justice in Latin America and Eastern Europe* (New York: United Nations University Press, 2012). Attempts to address past human rights abuses in Latin America continue, but scholars have referred to these efforts as 'post-transitional justice,' because transitions to democracy are generally believed to have taken place. See, for example, Cath Collins, 'Post-Transitional Justice: Human Rights Trials in Chile and El Salvador' (Pennsylvania: Penn State University Press, 2010); For different interpretations on the efficacy of transitional and 'post-transitional' justice in Latin America, see Sikkink and Walling, 'Cascades'; and the different in interpretations of the Argentinian transitional justice process in Carlos Santiago Nino, *Radical Evil on Trial* (New Haven: Yale University Press, 1998) and Jaime Malamud-Goti, *Game without End: State Terror and the Politics of Justice*, (Norman: University of Oklahoma Press, 1996).

³³ Teitel, 'Transitions', p.79.

³⁴ Lavinia Stan (ed.), *Transitional Justice in Eastern Europe and the Former Soviet Union* (Abingdon: Routledge, 2009)

³⁵ Ruti Teitel offers an interesting insight into the development of transitional justice and the 'end of history' mentality, in Teitel, 'Transitional', p.85-68. Both Paige Arthur and David Rieff write about the 'de-radicalisation' of social movements and particularly the global decline of the Left during the 1970s. They argue that a generation of humanitarians and human rights advocates emerged from the 'husk of the scared Left', see David Rieff, *A bed for the Night: Humanitarianism in Crisis* (New York: Simon & Schuster, 2003). p.199; Arthur, 'Transitions', p.339.

³⁶ Hakan, 'Judging', p.41.

colonial legacy.³⁷ Despite this, the role that socio-economic justice might play in transitions was not included in the original discussions about transitional justice in any substantive way. Even if it emerged as a field that recognised the dilemmas involved in balancing justice with the other complex and diverse requirements of nation-building, first generation human rights were the central legal and ethical framework within which it would operate, justify, and measure itself.

The expansion of transitional justice

The initial conceptual foundations that underpinned the new field of transitional justice were soon stretched by the rapidly shifting politics of the post-Cold War world. Before it had been adequately theorized, transitional justice underwent what Pablo De Grieff has called ‘excessive expansion’.³⁸ During the 1990s, transitional justice policies were being formed in the context of seemingly antithetical post-Cold War political developments. As Pierre Hazan points out,

‘there was a cautious optimism linked to accelerated democratic transitions after 1989, but the post-Cold War period also witnessed the multiplication of internal conflicts and policies of ethnic cleansing and genocide, marked by Rwanda and Srebrenica’.³⁹

In line with emerging ideas about transitional justice, the ‘cautious optimism’ approach raised questions about the wisdom of systematic prosecutions in situations where regime change was a fragile operation, so, as has been noted above, alternative and complementary mechanisms were promoted to mitigate the risks associated with an overly punitive or lenient prosecutorial strategy. Although not the first, the South African TRC has been central in shaping modern attitudes towards truth commissions. The experience in South Africa broadened the moral and political justifications for a ‘restorative’ approach to human rights violations in the greater service of nation building. As one activist later remarked after South Africa, ‘the world has become besotted with truth commissions’.⁴⁰ But transitional justice in this period also became associated with a post-Cold War ‘globalising politics’, which raised profound questions at the ‘intersection of jurisdiction and sovereignty’ and led to radical changes in international criminal law

³⁷ Arthur, ‘Transitions’, p.341-3; Mahmood Mamdani, ‘Beyond Settler and Native as Political Identities: Overcoming the Political Legacy of Colonialism’, *Comparative Studies in Society and History*, 43:4 (2001), pp.651-664; Michael Bratton and Nicolas Van De Walle, ‘Neo-Patrimonial Regimes and Political Transitions in Africa’, *World Politics*, 46:4 (1994), pp.453-489.

³⁸ De Grieff, ‘Thoughts’, p.11

³⁹ Hazan, ‘Judging’, p.55

⁴⁰ cf. Hazan, ‘Judging’, p.33

and practice.⁴¹ The international tribunals for the former Yugoslavia and Rwanda were set up in 1993 and 1994 respectively, under the auspices of Chapter VII of the UN Charter, making an explicit link between the courts and international peace and security.⁴² Originally *ad hoc* responses to serious crimes, this gradual process generated its own internal dynamic by creating a bureaucracy, new norms, and jurisprudence, which in turn underpinned the legitimacy of judicial intervention in international relations.⁴³ Whilst on the one hand existing as an expression of South African particularism, transitional justice also became associated with a new set of ‘major legal edifices’, such as the ICTY, ICTR, ICC and other local and hybrid tribunals and criminal courts.⁴⁴

International jurisprudence became ‘normalized’ quite rapidly during the 1990s. The most ‘recognised symbol’ of this was the ICC, established in 2002⁴⁵ as a permanent international tribunal to prosecute war crimes, genocide, and crimes against humanity, as a ‘routine matter under international law’.⁴⁶ The Rome Statute of the court allowed for justice to be pursued in conditions of persistent and unresolved conflict.⁴⁷ It also emerged against the backdrop of a now established transitional justice paradigm, and in line with that thinking it emphasised the instrumental purposes of international justice in facilitating peace and state-building. The International Criminal Court’s August 2005 Report to the UN General Assembly confidently outlined the existing network of international justice bodies and the role they play as enforcers and custodians of collective security:

⁴¹ Teitel, ‘Transitional’, p.88

⁴² See Kerr and Mobekk, ‘Justice’. The ICC has a different relationship to the UNSC. The ICC is an independent judicial institution but the Rome Statute recognises a specific role for the UNSC, which can refer situations in which Rome Statute crimes have been committed in any state, regardless of whether it is a Rome Statute signatory, under Chapter VII of the UN Charter. See David Bosco, *Rough Justice: The International Criminal Court in a World of Power Politics* (New York: Oxford University Press, 2014).

⁴³ David J. Scheffer, ‘Genocide and Atrocity Crimes’, *Genocide Studies and Prevention*, 1 (2006), p.229-250

⁴⁴ Kieran McAvoy, ‘Beyond Legalism: Towards a Thicker Understanding of ‘Transitional Justice’, *Journal of Law and Society*, 34:4 (2007), pp.411-440 at p.415; in the scholarly literature this state of affairs led to a significant debate about truth versus justice in transitioning contexts: For a good summary of that debate and an overview of how the debate has evolved, see Naomi Roht Arriaza and Javier Mariezcurrena (eds.), *Transitional Justice in the twenty-first century: Beyond Truth Versus Justice* (New York: Cambridge University Press, 2006).

⁴⁵ The Rome Statute was adopted in 1998 but the court did not become ‘established’ until it reached the requisite number of ratifications in July 2002.

⁴⁶ Teitel, ‘Transitional’, p.90; For useful analyses of the debates that led up to its emergence see: William Schabas, ‘International Criminal Court: The Secret of its Success’, *Criminal Law Forum*, 12:4 (2001), pp.415-428; Philip Kirsch and John Holmes, ‘The Birth of the International Criminal Court: the 1998 Rome Conference’, *Canadian Yearbook of International Law* 36 (1998).

⁴⁷ Vinjamuri, ‘Deterrence’.

‘The Court is the centre-piece of an emerging system of international criminal justice which includes national courts, international courts, and hybrid tribunals, with both national and international components. These institutions of criminal justice are also closely linked to efforts to establish and maintain international peace and security’.⁴⁸

In so far as Rome Statute crimes may involve abuse of power by political leaders, no one, not even acting Heads of State, were (or are) immune from judgment.⁴⁹ International courts and tribunals have indicted national leaders and rebels who might be pivotal to on-going peace talks, such as Slobodan Milošević, Joseph Kony, Charles Taylor, Omar al-Bashir and most recently Muammar al-Gaddafi, before his death. This has turned what were once hypothetical debates about the relationship between peace and justice into urgent policy dilemmas.⁵⁰ Since the turn of the century, and especially with the advent of the ICC’s prosecutorial strategy, the Court has become a site of serious contention in international politics. Recent years, for example, have witnessed the ‘bloc opposition’ of the African Union, the most important regional organisation in the continent where the ICC has focused almost all of its efforts.⁵¹ President Museveni’s attitude towards the court is instructive here. In September 2013, almost exactly ten years after he oversaw the first State referral to the ICC, he addressed the UN General Assembly and condemned the ‘shallow and biased’ way that the court has ‘continued to mishandle complex African issues’ and counseled that the ICC stop meddling in ‘past mistakes’.⁵² Not long before, he had attended the AU Summit in Addis, and called on the ICC to ‘stop hunting Africans’.⁵³ Norbert Mao, the former District chief of Gulu, has argued that Museveni is ‘on the wrong side of history’ on the ICC but it is not so clear that he is. The poisonous relationship between the Court and the AU has been a source of political and electoral capital for African leaders, who successfully campaign against the neo-imperialist tendencies of the West and Western institutions, which is how

⁴⁸ Report of the International Criminal Court to the United Nations, 1 August 2005, A/60/177, <http://amicc.org/docs/ICCreporttoga%20august2005.pdf> (accessed March 2011).

⁴⁹ On 30 June 2014, the African Union voted to grant African Heads of State and ‘senior officials’ immunity at the fledgling African Court of Justice and Human Rights.

⁵⁰ Vinjamuri, ‘Deterrence’; Chandra Lekha Sriram and Suren Pillay, *Peace Versus Justice: The Dilemma of Transitional Justice in Africa*, (Scottsville: University of KwaZulu Press, 2009).

⁵¹ Hazan, ‘Judging’, p.160; Sriram and Pillay, ‘Peace’.

⁵² Norbert Mao, ‘Museveni was cheerleader of the ICC; what went wrong?’ Daily Monitor, 22.10.2013, <http://www.monitor.co.ug/OpeEd/Commentary/Museveni-was-cheerleader-of-ICC--what-went-wrong-/-/689364/2041572/-/j9y241z/-/index.html> (accessed 23.10.2013).

⁵³ ‘Museveni turns from ICC admirer to critic’, http://observer.ug/index.php?option=com_content&view=article&id=25783:museveni-turns-from-icc-admirer-to-critic The Observer, 09.06.2013 (accessed 10.09.2013).

the ICC is framed by its detractors, even if the balance of Rome Statute signatories might indicate otherwise.

Shaw *et. al* argue that contemporary transitional justice practice is at once marked by a 'return to Nuremberg's international norms against impunity' and a 'fascination with locality'.⁵⁴ Indeed in contexts where mass atrocities were committed during the 1990s and early 2000s, including Rwanda, Sierra Leone, and the former Yugoslavia, trials⁵⁵ and even truth commissions have been accused of being insufficiently attentive to local cultures, social integration and reconstruction. The first scholars to engage with the 'local' in transitional justice asked whether 'universalistic assumptions about the benefits of justice accord with what people think on the ground' and whether 'adequate account is taken of non-western cultures, beliefs and local practices of justice'.⁵⁶ Part of the problem was the *nature* of these 'new wars' and the complicated reality of their aftermath, in which those who killed and harmed had to live side by side with those upon whom they inflicted suffering and humiliation.⁵⁷ This led to a growing interest in the role that 'local' or 'traditional' practices of dispute settlement and reconciliation might play in transitional justice.⁵⁸ Scholars and practitioners alike argued that 'traditional' and 'informal' justice systems should be adopted or adapted as part of a broader response to mass violence, and the 2004 UNSG report acknowledged that 'due regard must be given to indigenous and informal traditions for administering justice'.⁵⁹ What Shaw *et. al* term the 'shift towards the local' in transitional justice has also resulted in a clearer international commitment to victims' rights and needs in transitional justice programming.⁶⁰ Guidelines and templates on how to manage the victims of human rights violations are now fairly well established. The ICC Statute, for example, established a Trust Fund for Victims (TFV), and also contains guidelines on the

⁵⁴ Shaw *et. al*, 'Localizing', p.4.

⁵⁵ Another form of trial that launched during this period was the 'hybrid tribunal'. These have been set up in various contexts, including Sierra Leone, East Timor, and Lebanon. For an overview, see, Cesare Romano, *Internationalised Criminal Courts* (Oxford: Oxford University Press, 2004).

⁵⁶ Laurel Fletcher and Harvey Weinstein, 'Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation', *Human Rights Quarterly*, 24:3, pp.573-639; Laurel Fletcher and Harvey Weinstein, 'Context, Timing and Dynamics of Transitional Justice: A Historical Perspective', *Human Rights Quarterly*, 31:1, pp.163-220, p.2

⁵⁷ See, Theidon, 'Intimate'.

⁵⁸ Tim Allen and Anna Macdonald, 'Post-Conflict Traditional Justice: A Critical Overview', *Justice and Security Research Programme Working Paper 3* (2013).

⁵⁹ Ibid; Luc Huyse and Marc Salter (eds.), *Traditional Justice and Reconciliation after Violent Conflict* (Stockholm: International IDEA, 2008).

⁶⁰ Jemima Garcia-Godos and Chandra Lekha Sriram, 'Introduction' in Sriram *et. al*, 'Transitional', p.4.

participation of victims in court hearings.⁶¹ The UN's 2005 *Basic Principles and Guidelines on the Right to Remedy and Reparation*, meanwhile, establish a right-based interpretation of access to justice, reparation and truth.⁶² In practice, though, scholars have levelled sharp critiques at the 'nod' to the local, arguing that neither support for local practices or victim-centeredness really modifies the 'foundational assumptions' of transitional justice.⁶³ These 'foundational assumptions' and their logics in current practice are explored in more detail below.

Transitional justice, liberal peace-building and the rule of law: the 'normalisation of transitional justice'

There is a fundamental aspect of the short history of transitional justice that requires more explanation and is particularly pertinent to the Ugandan case. Nearly three decades after the wave of democratic transitions brought the field to life, transitional justice faces an under-conceptualised challenge, namely that it operates in radically different contexts from those for which it was first designed in the late 1980s and early 1990s.⁶⁴ At the outset, transitional justice policies were designed to resolve specific policy challenges, most notably in the Latin American countries of the Southern Cone. Firstly, measures were designed and implemented in countries with 'relatively high degrees of both horizontal and vertical institutionalization'.⁶⁵ Today, we see transitional justice being proposed and implemented in hybrid legal and political spaces such as northern Uganda, where the institutions of the state are largely absent. Secondly, transitional justice came to life in places that were transitioning from authoritarianism to, hopefully democracy. Today, it operates in post-conflict peace-building contexts, sometimes in 'illiberal states with little pretension to democratic transition'.⁶⁶ Thirdly, in its original formulations,

⁶¹ *ibid*, p.5

⁶² *ibid*

⁶³ Shaw et. al, 'Localising', p.4. See, Kieran McEvoy and Kirsten McConnachie, 'Victims and Transitional Justice: Voice, Agency and Blame', *Social and Legal Studies* 22:4 (2013), pp.489-513, p.490. For a recent study problematising the concept of justice for victims at the ICC, see Carolyn Hoyle and Leila Ullrich, 'New Court, New Justice? The Evolution of 'Justice for Victims' at Domestic Courts and at the ICC', *Journal of International Criminal Justice* (2014), p.1-23; Simon Robbins, 'Towards Victim-Centered Transitional Justice: Understanding the Needs of Families of the Disappeared in Postconflict Nepal', *International Journal of Transitional Justice* 5:1 (2011), pp.75-98.

⁶⁴ Pablo De Grieff, 'Some Thoughts on the Development and Present State of Transitional Justice', *Anuario de Derechos Humanos*, 7 (2011). English language translation on file with author.

⁶⁵ *ibid*, p.1

⁶⁶ Dustin Sharp, 'Interrogating', p.151

transitional justice was designed to meet the challenge of ‘abusive exercise of state power’⁶⁷, and although this was a major feature of the war in northern Uganda, the extent of the fratricidal violence perpetrated by the LRA against its fellow Acholis and northern Ugandans provides an additional and perhaps not sufficiently understood problem for transitional justice.⁶⁸

Part of the reason for the expansion of transitional justice was the advent of judicial interventionism, shaped as it was by collective security agendas and normative shifts of the 1990s. But something else important happened too. As ethnic wars raged in the 1990s, the transitional justice formula became subsumed into the broader liberal international peace-building apparatus.⁶⁹ Along with other initiatives such as security sector reform (SSR), rule of law strengthening and disarmament, demobilisation and reintegration (DDR), transitional justice became a core component of what Mac Ginty termed ‘routine peace-building,’ and another element of the ‘common swirl of politically related “good things”’ that development and aid agencies saw as central in the promotion of liberal market democracies in post-conflict states.⁷⁰ Critics complained about conceptual ‘expansion’ and ‘stretching,’ yet it was not evident that much conceptualising was happening at all.⁷¹ Rather, transitional justice was undergoing *application* expansion – the same tools and frameworks were being used in radically different contexts, without adequate consideration. It also gradually became professionalized and bureaucratized. The International Center for Transitional Justice (ICTJ) was set up in 2000 by the former vice-President of the South African TRC, Alex Borraïne, and soon co-opted other prestigious former commission members and human rights experts to its board and staff.⁷² Transitional justice ‘consultants’ employed by the UN and other agencies were,

⁶⁷ Arthur, ‘Transitions’, p.249

⁶⁸ Researchers are increasingly beginning to address these challenges. See for example, Shaw et. al, ‘Localizing’; Sriram et. al, ‘Peacebuilding’.

⁶⁹ Chandra Sriram, ‘Justice as Peace? Liberal Peacebuilding and Strategies of Transitional Justice’, *Global Society*, 24:1 (2007), p.579-591, p.586

⁷⁰ Roger Mac Ginty, ‘Routine Peace: Technocracy and peacebuilding’, *Cooperation and Conflict*, 47:3 (2012), pp.287-308; Sharp, ‘Interrogating’, p.151 Thomas Carothers and Diane De Gramont, *Development Aid Confronts Politics: The Almost Revolution* (Washington D.C: Carnegie Endowment for International Peace, 2013), p.57

⁷¹ For a critique of TJ’s expansion, see for example, ‘Teitel’, ‘Transitional’.

⁷² Yves Dezalay and Bryant Garth (eds.), *Lawyers and the Construction of Transitional Justice* (Abingdon: Routledge, 2012), p.92; The former head of research at the ICTJ, Pablo de Greiff was appointed as the UN’s first Special Rapporteur on the promotion of truth, justice and reparation and guarantees of non-recurrence in 2011. Many ICTJ staff have experience of TJ in Latin America and South Africa, more so than in conflict/post-conflict contexts.

and still are, flown around the world to advise on transitional justice in contexts they were not necessarily all that familiar with.⁷³

Transitional justice and liberal peace-building share a compatible logic. As Chandra Sriram has argued, both share a 'faith' that 'key goods' such as democracy and justice can 'essentially stand in for and necessarily create peace'.⁷⁴ But as critics of the liberal peace agenda argue, the 'peace' which it aims to create is a specific one, involving the promotion of democracy, market-based economic reforms, secular authority, centralized governance and institutions of justice.⁷⁵ The incorporation of transitional justice into the broader liberal peace-building agenda was officially realised with the launch of the UNSG's 2004 report, which made an explicit link between transitional justice, peace-building, and the rule of law, and encouraged people to think of 'justice, peace, and democracy,' as 'mutually reinforcing imperatives' that must be advanced in 'fragile, post-conflict settings'.⁷⁶ Indeed the 'rule of law' itself is a notoriously difficult concept to pin down. It has as Nick Cheesman argues, become 'an all encompassing global good, an international hurrah term (and) has eclipsed other political ideals'.⁷⁷ Querying the precise meaning of the term has almost become a scholarly sub-discipline in itself but Balakrishnan Rajagopal's summation that it is 'increasingly seen as the panacea for all the problems that afflict many non-Western countries, particularly in post conflict settings', is apt.⁷⁸ He continues:

'Development experts prescribe it as the surest shortcut to market-led growth; human rights groups advocate the rule-of-law as the best defense against human rights abuses; and in the area of peace and security, the rule of law is considered the surest guarantee against the re-emergence of conflict'.⁷⁹

⁷³ MacGinty, Routine Peace; this was a problem in Uganda.

⁷⁴ Sriram, 'Justice', p.579; Roland Paris, 'Saving Liberal Peacebuilding', *Review of International Studies*, 36:2 (2010), pp.337-365.

⁷⁵ Edward Newman, Roland Paris and Oliver Richmond (eds.), *New Perspectives of Liberal Peacebuilding* (New York: United Nations University Press, 2009), pp.10-12; Paris, 'Saving'; Hannah Franzki and Maria Carolina Olarte, 'Understanding the political economy of transitional justice: A critical theory perspective', in Susanne Buckley Zistel et. al (eds.), *Transitional Justice Theories* (Abingdon: Routledge, 2014), pp.201-222.

⁷⁶ UNSG, 'Rule'; Sriram, 'Justice', p.585; In practice the relationship between transitional justice and the rule of law has not been well conceptualized or programmed for. For a good analysis see, Padraig McAuligge, *Transitional Justice and Rule of Law Reconstruction: A Contentious Relationship* (Abingdon: Routledge, 2012).

⁷⁷ Nick Cheesman, 'Law and Order as Asymmetrical Opposite to the Rule of Law', *Hague Journal on the Rule of Law*, 6:1 (2014), pp.96-114, p.97.

⁷⁸ Balakrishnan Rajagopal, 'Invoking the Rule of Law in Post-Conflict Rebuilding: A Critical Examination', *William and Mary Law Review*, 49, (2007), pp.1347-1376, pp.1347-8.

⁷⁹ Ibid.

Pablo De Grieff has argued that ‘scholars largely agree about usefulness of transitional justice measures to re-establish the rule of law’.⁸⁰ But this is not so clear. Scholars have critiqued the relationship from two perspectives: the first holds that the conflation of transitional justice and rule of law has led to the ‘marginalization of bread and butter rule of law issues’, through the promotion and privileging of transitional justice initiatives, such as war crimes courts and truth commissions.⁸¹ The second major critique is that transitional justice legitimates rule of law promotion, which, in essence is concerned with modeling states according to the free market and thus entrenches systematic inequalities and actually constrains democracy.⁸²

The programmatic linkages between rule of law and transitional justice were not explicitly defined in the 2004 UN Report, and remain vague even today. Despite this, there is a strong normative assumption that transitional justice will strengthen the rule of law. The ‘Rule-of-Law Tools for Post Conflict States’ series published by the UN High Commissioner for Human Rights (OHCHR), for example, provided for policy makers a manual on each of the major transitional justice processes, and how they might ‘enhance’ UN efforts to ‘work quickly and effectively to re-establish the rule of law and the administration of justice in post-conflict missions’.⁸³ As liberal peace-building policy and practice has evolved, transitional justice practice has evolved with it. From the mid-2000s, the UN was articulating a need for better ‘state-building’ and a belief that more attention needed to be paid towards strengthening government institutions in order to ‘lock in’ liberal political and economic reforms.⁸⁴ This was influenced by the wars in Afghanistan and Iraq which reinforced calls for the ‘creation and nurturing of robust rule of law institutions in fragile states’.⁸⁵ In a 2011 follow-up to the original 2004 report, the new UN Secretary General, Ban Ki Moon, again explicitly linked transitional justice to broader rule of law reforms but also to ambitious institution-building and economic development objectives:

⁸⁰ Pablo De Grieff, ‘Theorizing Transitional Justice’, in Rosemary Nagy et. al, (eds.), *Transitional Justice* (New York: New York University Press, 2012), pp.31-57, p.53.

⁸¹ McAuliffe, ‘Transitional’, p.9.

⁸² See, for example, Franzki and Olarte, ‘Political’, p.216.

⁸³ The full range of the ‘Rule of Law’ tools are available at, <http://www.unrol.org/dr.aspx> (accessed November 2013).

⁸⁴ Paris, ‘Saving’, p.342. In academic circles, the shift towards statebuilding was reflected in the call, particularly by Roland Paris, to prioritise institution building over democracy promotion. This argument came to be known as ‘Institutionalisation before Liberalisation’ of ‘IBL’, see, Roland Paris, ‘Peacebuilding and the Limits of Liberal Internationalism’, *International Security* 22:2 (1997), 54-89.

⁸⁵ Stephen Humphreys, *The Theatre of the Rule of Law*, (Cambridge: Cambridge University Press, 2012), p.7

‘transitional justice initiatives promote accountability, reinforce respect for human rights and are critical to fostering the strong levels of civic trust required to bolster rule of law reform, economic development and democratic governance.’

Transitional justice initiatives have become, the UNSG continued, ‘indispensable elements of post conflict strategic planning’.⁸⁶ The World Bank’s World Development Report noted that same year that transitional justice initiatives in post conflict societies, ‘send powerful signals about the commitment of the new government to the rule of law’.⁸⁷ Thus in the last decade, from Iraq⁸⁸ to Uganda, transitional justice has become embedded in general international top-down efforts to rebuild or consolidate the structures of governance in post-conflict states, and linked to programmatic rule of law reforms that include ‘technical assistance’ in:

‘drafting laws, direct support for courts and judiciaries to strengthen ‘independence’, training for security services, support for civil society and private associations to advocate in favour of human rights and against corruption’.⁸⁹

Today, the rhetoric around transitional justice is politically neutralized, using the language of ‘good governance’ and ‘rule of law,’ which are presented as intuitive, or ‘post-political’.⁹⁰ Thus it paradoxically intimates a rather inchoate, abstract ambition to universalize the standards of humanity in the service of peace and democracy, while at the same time being rooted in a technocratic logic about how change happens. This represents an interesting departure from the original conception of transitional justice, rooted as it was in the explicit need to negotiate political bargains and compromises in order to ensure meaningful political change. It also represents a form of what James Ferguson famously called ‘anti-politics’, a form of development intervention that may not achieve stated objectives because its logic is based on the construction countries that bears ‘little relation to prevailing realities.’⁹¹ Transitional justice has been critiqued on these grounds in places as widespread as Sierra Leone, Afghanistan and Nepal.⁹² It

⁸⁶ *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary General to the Security Council*, UN Doc. S/2011/634 (12 October 2011).

⁸⁷ World Bank, ‘Conflict’, p.125.

⁸⁸ Referred to Franzski and Olarte, ‘Political’, p.215; see United States Department of State, *Transitional Justice in post-Saddam Iraq: the road to re-establishing the rule of law and restoring civil society* (2003).

⁸⁹ Humpreys, ‘Theatre’, p.7.

⁹⁰ The term ‘post-political’ is used by Franzski and Olarte, ‘Political’.

⁹¹ James Ferguson, *The Anti-Politics Machine: Development, Depoliticisation and Bureaucratic Power in Lesotho* (Minneapolis: University of Minnesota Press, 1994), p.7

⁹² See for example, Graeme Young, ‘Transitional Justice in Sierra Leone: A Critical Analysis’, *Peace and Progress* 1:1 (2011), pp.3-17; Ahmad Nader Nadery, ‘Peace or Justice? Transitional Justice in Afghanistan’, *International Journal of Transitional Justice* 1:1 (2007), pp.173-9; Simon Robins, ‘Transitional Justice as an elite

would be misleading to claim that this has not been recognized as an issue amongst development and transitional justice practitioners. Prescriptions for ‘greater sensitivity’ of context in programming, however, reproduces a specialist, technical language that is inscrutable to outsiders, or engages in obfuscation with the deployment of new paradigms such as ‘beneficiary participation’, which are largely tokenistic addendums to the status quo.⁹³

The question arises as to whether the dominant liberal transitional justice paradigm is shaped by the ethics of cosmopolitanism or is more adequately described as a form of neo-colonialism. On the one hand, attempts to re-order societies are part of a western tradition that dates back to the 17th century.⁹⁴ Roland Paris argues that both European colonialism and today’s post-conflict agendas:

‘have involved powerful external actors seeking to re-fashion the domestic structures of weaker societies in accordance with prevailing notions of good or ‘civilised’ governance... now translated into contemporary parlance of ‘capacity building’ and ‘good governance’.⁹⁵

The ‘normalisation’ of transitional justice in international policy is also welcomed, however, as a sign of the cosmopolitanism of a global civil society, which has been described as the ‘ethically attractive part of the globalization package’.⁹⁶ The idea that all human beings live in the same universal moral community, and thus are equally deserving of human rights and justice guarantees, has a strong deontological appeal. And yet, what both cosmopolitan approaches, expressed through INGOs and human rights movements, and development approaches, focused on state-building and good governance share, is what Craig Calhoun calls:

‘a distanced view of the global system, a view from nowhere or from an impossible everywhere that encourages misrecognition of the actual social locations from which distant troubles appear as emergencies.’⁹⁷

The dominant transitional justice conception which, today, finds expression in broader international post-conflict policy is not badly intentioned or malicious. The point is

discourse: Human rights practice between the global and the local in post-conflict Nepal’, *Critical Asian Studies* 44:1 (2012).

⁹³ Carothers and De Gramont, ‘Development’, p.181; Shaw et. al, ‘Localizing’, p.6.

⁹⁴ Taylor, ‘Modern’, p.39

⁹⁵ Roland Paris, ‘Saving’ p.350;

⁹⁶ Craig Calhoun, ‘The Imperative to Reduce Suffering: Charity, Progress, and Emergencies in the Field of Humanitarian Action’, in Micheal Barnett and Thomas G. Weiss (eds.), *Humanitarianism in Question: Politics, Power, Ethics* (New York: Cornell University Press, 2008), pp.73-98, p.84

⁹⁷ Ibid, p.85.

more that it derives from a particular way of seeing the world, and thus represents a limited perspective, even if its advocates and policy makers regard it in universalizing terms. The technocratic direction reinforces this limitation because it encourages a closed feedback loop. The terms of debate are conventionally set using categories that simultaneously describe and interpret social phenomena. Roger Mac Ginty calls this ‘epistemic closure’, the practice whereby problems are conceived as autonomous and freestanding and thus exist within in a delimited framework of possible solutions. The assertion of a senior official at the UNDP Bureau for Crisis Prevention and Recovery sums this up: ‘what does a state need to get over a legacy of violence?’ she asked rhetorically, ‘The answer is transitional justice’.⁹⁸

Transitional justice: Law, Politics and Practice

The previous section argued that transitional justice as promoted by development and aid agencies – whether bilateral or multilateral, is today a normative political project (despite presenting itself as political neutral and value free), which views transitional justice processes as part of the global movement towards political liberalization.⁹⁹ Here though, we encounter a conceptual problem. According to the scholarly literature, transitional justice exists both at the ‘high altitude, immobilized and abstracted’ and at the ‘everyday’ politics of places.¹⁰⁰ But how can transitional justice be both an international political project linked to liberal peace-building and claims of the universality of human rights and justice *and at the same time* a discrete set of ideas and practices linked to culturally relative notions? And what holds these facets of transitional justice together?

There is no agreement in the literature about the ‘type of transition that legitimately triggers transitional justice’¹⁰¹. What is clearer is that the term transition tends to be ‘positively signified’.¹⁰² The word itself is not simply descriptive of a process of change, as Sipiwe Dube argues, it carries the notion of teleological progress, which tends to

⁹⁸ Author interview with UNDP official, London, 07.11.2012

⁹⁹ See for example, Franzski and Olarte, ‘Political’; Sharp, ‘Fourth-Generation’ and Rosemary Nagy, ‘Transitional Justice as Global Project: Critical Reflections’, *Third World Quarterly*, 29:2 (2008), pp.275-289.

¹⁰⁰ See for example, International Journal of Transitional Justice Special Issue: Transitional Justice and the Everyday, 6:3 (2012); Alcala and Baines, ‘Editorial’, p.387

¹⁰¹ Christine Bell, ‘Transitional’, p.24

¹⁰² Sipiwe Dube, ‘Transitional Justice Beyond the Normative: Towards a Literary Theory of Political Transitions’, *International Journal of Transitional Justice*, 5:2 (2011), pp.177-197, p.178

obscure the turbulent, deviating and contingent aspects of any transitional phase.¹⁰³ Indeed the reality is that each individual transitional process modifies latitudinous international legal rules and frameworks, whilst introducing other historically specific and contingent elements. This process of modification reveals a variety of different conceptions about what transitional justice is and what it ought to achieve.¹⁰⁴ Jack Donnelly describes this process, in the context of international human rights more generally, as ‘substantial second order variation’.¹⁰⁵ Below, three conceptions of transitional justice particularly pertinent to the Ugandan case are laid out and each implies a difficult relationship between the liberal conception espoused by the UN and other aid agencies, and the realities of political context.

Firstly, different conceptions of transitional justice may be part of the deliberate strategy of powerful elites in whose interests it is to halt, subvert, or circumvent its progression. In Uganda, as we shall see, the government’s conception of transitional justice, has, to date, focused exclusively on LRA perpetrators, and excludes UPDF soldiers who, the government argues, should be dealt with through the court martial system. In Kenya, the Truth, Justice and Reconciliation Commission which was set up in the aftermath of the post-2007 election violence to establish a record of abuses dating back to independence in 1963, has been described as an ‘attempt to protect, rather than expose, those responsible for past crimes’.¹⁰⁶ Finally, in Colombia, Michael Taussig has described the ‘inverse relationship between Colombia’s layers of laws upon laws, including ratification of human rights standards, and the lived reality of violence, corruption, and impunity experienced by so many ordinary Colombians’.¹⁰⁷ This raises an important point, which is that the normative structures that exist in global politics are not self-evidently true.¹⁰⁸

¹⁰³ Ibid, p.178

¹⁰⁴ Nicola Palmer and Phil Clark, ‘Challenging Transitional Justice’, in Nicola Palmer et. al (eds.), *Critical Perspectives in Transitional Justice*, (Mortsel: Intersentia, 2012); Jack Donnelly, ‘The Relative Universality of Human Rights’, *Human Rights Quarterly* 29:2 (2007), pp.281-306, p.300

¹⁰⁵ Jack Donnelly, ‘Universality’, p.300

¹⁰⁶ Stephen Brown has described transitional justice in the Kenyan context as ‘transitional justice as subterfuge’, see <http://cips.uottawa.ca/transitional-justice-as-subterfuge/> (accessed January 2014). See also Stephen Brown and Chandra Sriram, ‘The big fish won’t fry themselves: Criminal accountability for post-election violence in Kenya’, *African Affairs*, 111:443 (2012), pp.244-260.

¹⁰⁷ McAvoy, ‘Legalism’, p.419. It is important to note that Uganda, Kenya and Colombia are all cases of transitional justice ‘without transition’ – indeed this is an increasingly common phenomenon. There is however, a large literature on the politics of transitional justice in other, transitioning, contexts, for an overview see Roht-Arriaza, ‘Transitional’.

¹⁰⁸ There is a vast literature on compliance and international law/norms. See for example, Kal Raustiala and Anne-Marie Slaughter, ‘International Law, International Relations and Compliance’, in Walter Carlsnaes, Thomas Risse and Beth Simmons, *Handbook of International Relations* (London: Sage, 2002)

Questions about why and how states adhere to them reveal what Schmitt famously called the ‘political quality of the law’.¹⁰⁹ President Museveni’s quip to the audience at the 2010 ICC Review Conference in Kampala about ‘you people’ and ‘your love for human rights!’, was disconcerting for observers and it is tempting to caricature his remarks as playful deviance or pure politicking.¹¹⁰ This would be misguided. As Nick Cheesman has argued, too often, scholars and practitioners have misconstrued the gap between compliance and commitment as a gap between ‘principle and practice, between aspiration and reality’, when the issue is actually that governments in question are being held up to an ‘ideal to which they do not in fact subscribe’.¹¹¹ Thus the difference in political arrangements is not just one of ‘degree’ but one of ‘kind’, a realization that should ‘encourage a little less hubris’ and more sober attention to the possibility that states and leaders who do not subscribe to rule of law are not simply ‘occupants of low rungs on a ladder to the rule of law; they are climbing a different ladder altogether’.¹¹² In Uganda, for example, donor support for transitional justice is linked to the normative framework of the rule of law and, as will be argued in Chapters 5 and 6, powerful state actors, politicians and security officials commonly reject its entire rationale.

Secondly, different transitional justice conceptions can emerge from the way in which the process is framed both ethically and morally. The spiritual language that is invoked by proponents of ‘restorative’ approaches is stratified and linked to what has been called ‘a jurisprudence of forgiveness and reconciliation’ that borrows from the non-legal ‘domains of medicine and theology’.¹¹³ Thus Archbishop Desmond Tutu, the President of the South African TRC, linked Christian forgiveness and African mysticism to the goal of reconciliation.¹¹⁴ In his rhetoric surrounding the launch of the South TRC, Tutu’s invocation of *Ubuntu*, a romantic expression of the social regulation of the ‘rural African community’, was also part of a spiritual and moral case for an alternative transitional justice conception. He argued that:

pp.538-539, p.538. For arguments directly related to transitional justice, see Jelena Subotic, *Hijacked Justice: Dealing with the past in the Balkans*, (New York: Cornell University Press, 2009), p.7.

¹⁰⁹ Carl Schmitt, *Constitutional Theory* (Duke University Press, 2008), p.30

¹¹⁰ This quote was relayed during an author interview with an NGO official in Kampala, 28.05.2012; other attendees later corroborated it.

¹¹¹ Cheesman, ‘Law’, p.113-4

¹¹² *ibid*

¹¹³ Teitel, ‘Transitional’, p.81.

¹¹⁴ Richard Wilson, *The Politics of Truth and Reconciliation in South Africa: Legitimising the Post-Apartheid State* (Cambridge: Cambridge University Press, 2001), p.9; Hazan, ‘Judging’, p.36.

‘Ubuntu says I am human only because you are human...you must do what you can to maintain this great harmony which is perpetually undermined by resentment, anger, desire for vengeance. That is why African jurisprudence is restorative rather than retributive’.¹¹⁵

In northern Uganda, amnesty and forgiveness have been promoted as a form of restorative transitional justice by the political, religious and traditional leadership. Religious leaders, for example, have argued that ‘forgiveness’ is a core transitional justice principle in the Ugandan context and that the Amnesty Act, which it lobbied for is an expression of Acholi cultural values of mercy.¹¹⁶ The Amnesty Act itself defines amnesty as ‘a pardon, forgiveness, exemption or discharge from criminal prosecution or any other form of punishment by the State’.¹¹⁷ Chapter 6 shows that although initially favourable to such approaches, justice sector donors funding transitional justice in Uganda have become increasingly intolerant towards the blanket Amnesty and have been engaged – largely unsuccessfully – in an effort to re-calibrate this particular conception of transitional justice by pointing to Uganda’s obligations to prosecute under international law.

Another challenge to the dominant liberal conception of transitional justice – again, relevant to the Ugandan context – has been the foregrounding of ‘traditional’ approaches linked to concepts of intra and inter-communal reconciliation. This has necessitated donor engagement with practices such as witchcraft, spirit possession, and spiritual healing, all of which represent ‘difficult territory’ for international policy makers.¹¹⁸ While some scholars see ‘traditional’ processes as a more relevant and meaningful approach to accountability in contexts where the perpetrator/victim divide is blurred and state institutions are nominally absent, policy makers exhibit clear discomfort with ideas and practices that they regard as largely unreconstructed.¹¹⁹ Premised on systems of mutual support and obligation rather than the individual, and transacted in a non-

¹¹⁵ cf. Wilson, ‘Politics’, p.9.

¹¹⁶ See for example, ‘The ARLPI’s Position on the International Criminal Court (ICC)’, (2009), <http://www.arlpi.org/international-criminal-court-s-icc-uganda>

¹¹⁷ Amnesty Act (2000). The Ugandan Amnesty process has been somewhat distinct from the Amnesty Laws enacted in, for example, Pinochet’s Chile, Post-Franco Spain and post-Khmer Rouge Cambodia. In all cases, embedded elites have managed to benefit from Amnesty Laws, but in Uganda, the impetus for the Amnesty came from civil society groups in the affected region and support for the Amnesty amongst elites has often been reluctant and halting. Furthermore, the Act only applies to members of ‘rebel groups’.

¹¹⁸ See Baines, ‘Spirits’ and Tim Kelsall, *Culture under Cross-Examination: International Justice and the Special Court for Sierra Leone* (Cambridge: Cambridge University Press, 2013).

¹¹⁹ This is expressed implicitly in both the 2011 World Development Report and both UNSC reports on Transitional Justice and the Rule of Law (2004; 2011), in the acknowledgement that ‘traditional’ processes play a role but need to be made human-rights friendly.

codified way, they represent deviance rather than diversity, and are regarded as too amenable to state capture.¹²⁰ As described above, the UN and other agencies now agree that while such practices must be part of the transitional justice toolkit, because they are locally ‘embedded’, the ‘transcendent values’ that underpin international legal frameworks cannot be compromised.¹²¹

Thirdly, different conceptions of transitional justice challenge the dominant preoccupation with legal forms of redress for violations of civil or political rights during periods of conflict and oppression. In northern Uganda, it is unequivocally the case that the majority of people prioritise compensation and socio-economic redress over other forms of transitional justice.¹²² In other contexts this has become a more defined agenda. In Peru, South Africa and Chile, for example, where truth commissions have failed to have any impact on the direction of economic policy, advocates have argued that justice for the crimes experienced during the conflict can only be properly addressed through redistributive policies that address the legacies of socio-economic inequality.¹²³ The recent Arab Spring revolutions in Egypt, Libya and Tunisia witnessed a transitional justice conception derived from calls for greater ‘social justice’ in response to youth unemployment, corruption, income inequality and nepotism.¹²⁴ Such arguments are phrased in the language of economic, social and cultural rights (ESC) in an attempt to make social justice a legitimate priority within the transitional justice paradigm. This conception of transitional justice, just like the dominant conception which privileges civil and political rights, is still firmly rooted in international human rights law. It just represents a different set of priorities embedded in a particular cultural, historical and political logic, and a challenge to mainstream approaches.¹²⁵

¹²⁰ For an overview of debates, see Luc Huyse and Mark Salter (eds.), *Traditional Justice and Reconciliation after Violent Conflict: Learning from African Experiences* (Stockholm: IDEA, 2008) and Allen and Macdonald, ‘Post-Conflict’.

¹²¹ Shaw et. al, p.5; In his 2004 report, the UNSG, described as the ‘normative foundation’ for UN work in advancing transitional justice and the rule of law: ‘the Charter of the United Nations itself, together with the four pillars of the modern international legal system: international human rights law; international humanitarian law; international criminal law; and international refugee law’.

¹²² See Pham et. al, ‘Forgotten’; Pham et. al, ‘War’; Pham et, al, ‘Transitioning’.

¹²³ Lisa Laplante, ‘Transitional Justice and Peacebuilding: Diagnosing and Addressing the Socioeconomic Roots of Violence through a Human Rights Framework’, *International Journal of Transitional Justice*, 2:3 (2008), pp.331-55; James Cavallaro and Sebastian Albuja, ‘The Lost Agenda: Economic Crimes and Truth Commissions in Latin America and Beyond’, in Kieran McAvoy and Lorna McGregor, *Transitional Justice from Below* (Oxford: Hart Publishing, 2008), pp.121-89.

¹²⁴ Frank Haldemann and Rachel Kouassi ‘Transitional Justice Without Economic, Social and Cultural Rights?’, in Eibe Riedel, Gilles Giacca and Christophe Golay, *Economic, Social and Cultural Rights in International Law* (Oxford: Oxford University Press, 2014). pp.498-517

¹²⁵ For an analysis of some of the problems associated with incorporating ESC rights into transitional justice practice, see Waldorf, ‘Anticipating’ and Chandra Lekha Sriram, ‘Liberal Peacebuilding and

Transitional justice practices and the problem with 'holism'

In the scholarly literature, a consensus has emerged which takes into account the multiple conceptions of transitional justice and argues that as a form of practice, transitional justice must incorporate a whole range of theoretical and operational responses to mass conflict. In this broad view, accountability is just one of many goals, jostling for space alongside other reconstructive objectives such as reconciliation and forgiveness. Rama Mani offers one of the broadest interpretations. Her argument - which draws upon John Galtung's complementary objectives of negative peace (end of conflict) and positive peace (removal of structural and cultural violence) - is that a holistic approach is required. This involves 'reparative justice': restoring the rule of law through domestic criminal justice reforms; retributive justice; truth commissions, reparation, and traditional mechanisms; and finally redressing the inequalities that underlie conflict.¹²⁶ There is an appreciation that the broader aims of transitional justice will only be met by what Naomi Roht-Arriaza refers to as the 'interweaving, sequencing, and accommodating (of) multiple pathways to justice.'¹²⁷ It has also been suggested that there are very practical reasons for why the transitional justice 'industry' is keen for the concept to have a more 'holistic' approach which encompasses broader developmental objectives: because developmental and peace-building programmes tend to be better funded.¹²⁸

A concern is that scholars and practitioners have attempted to ameliorate the ontological and epistemological complexity of transitional justice through a call for greater procedural pluralism. 'Holism' is fashionable in post-conflict policy, and is a key plank of transitional justice programming in Uganda.¹²⁹ Two observations can be made here. The first is that while it is possible to list a wide range of processes - international prosecutions; domestic prosecutions; vetting; lustration; truth commissions; community-based justice; truth-telling; memorials; reparations - it is far more difficult to conceptualise the linkages between them and the politics that might intervene when one or more mechanisms, shaped by alternate transitional justice conceptions, operate in the

Transitional Justice: What Place for Socioeconomic concerns?' in Dustin Sharp (ed.), *Justice and Economic Violence in Transition* (Springer: New York, 2013), pp.27-49.

¹²⁶ Rama Mani, *Beyond Retribution: Seeking Justice in the Shadows of War* (Cambridge: Polity Press 2001).

¹²⁷ Roht-Arriaza, 'Transitional', p.8

¹²⁸ Waldorf, 'Anticipating', p.172

¹²⁹ This is discussed in detail in Chapter 5.

same socio-political space. The evidence from Rwanda, Sierra Leone, and East Timor, for example, shows that the relationship between different processes may be difficult, and can result in competition, tension, mistrust and confusion amongst local populations.¹³⁰ The second observation is that ‘holism’ implies a degree of permissive pluralism that the dominant liberal conceptions of transitional justice do not allow in practice. Thus, as has been alluded to above, for example, while ‘traditional processes’ are now foregrounded in transitional justice, they are still subject to universal claims and efforts towards ‘improvement’ which, if not introduced carefully, can ‘intellectually obscure’ and ‘politically repress’ difference.¹³¹

Justice in transition: Social repair and the ‘every-day’

It is important to make a conceptual distinction between ‘transitional justice’ and what might termed ‘justice in transition’. In recent years, there has been a ‘shift to the local’ in transitional justice research.¹³² Scholars are increasingly examining national and international transitional justice interventions through the local perspective, highlighting the discordance between ‘ideal’ policy prescriptions and on-the-ground realities. A particular strand of this literature is interested in what has been described as:

‘the many individual and collective ways in which people pursue mundane activities and practices to restore the basic fabrics of meaningful social relations, negotiation or recreative protective mechanisms and provide some sense of continuity in their lives and sense of self in relation to others’ in the aftermath of violence and conflict.¹³³

This literature is influenced by Veena Das’s examination of survivors of mass violence during the partition of India, in which she concludes that ‘life was not recovered through some grand gestures in the realm of the transcendent but through a descent into the ordinary’.¹³⁴ This kind of activity is often referred to in the literature as ‘social repair,’ but

¹³⁰ See for example, Nicola Palmer, ‘Transfer or Transformation? A Review of the Rule 11 bis Decisions of the International Criminal Tribunal for Rwanda,’ *The International Journal of International and Comparative Law*, 20:1 (2012), pp.1-21; Drexler, ‘Addressing’; Jessica Lincoln, *Transitional Justice, Peace, Accountability: Outreach and the Role of International Courts after Conflict* (Abingdon: Routledge, 2011).

¹³¹ Donnelly, ‘Universality’, p.298

¹³² Shaw et. al ‘Localizing’; Alexander Hinton (ed.) *Transitional Justice: Global Mechanisms and Local Realities after Mass Violence* (Rutgers: Rutgers University Press, 2011); International Journal of Transitional Justice ‘Special Issue’ on ‘Transitional Justice and the Everyday’ (November 2012).

¹³³ Alcala and Baines, ‘Editorial’, p.386

¹³⁴ Veena Das, *Life and Worlds: Violence and the Descent into the Ordinary* (Berkeley: University of Berkeley Press, 2007).

there is no theoretical foundation which underlies such a concept. A starting point towards better definitional clarity is to analyse what is meant by ‘social breakdown’. If we adopt Weinstein and Fletcher’s description of social breakdown as being determined by a ‘multiplicity of influences’ and characterized by: a destruction of infrastructure, displacement, economic chaos, social and health chaos, war crimes and crimes against humanity and civilian deaths – then it seems reasonable to suggest that social repair describes the way which people engage (or not) with processes and practices of recovery, coexistence and reconstruction as are of value in their everyday lives.¹³⁵

This is an area of inquiry that very important in northern Uganda, as well as in other contexts such as Rwanda and Sierra Leone. These were conflicts defined, in part, by fratricidal violence. It is the sort of violence that disrupts networks of familial and habituated relationships and creates what have been termed ‘intimate enemies’.¹³⁶ In a special edition of the International Journal of Transitional Justice (IJTJ), the editors discuss the possibilities for ‘re-conceptualizing transitional justice to consider the practices and processes with which people live through violence and seek to make sense of and resist violence’.¹³⁷ It is not clear whether the authors mean that transitional justice should be equated with everyday practices and processes of social repair, or whether it should simply take them into account. If the former, a word of caution is necessary. We lack information about how communities recover after mass violence, and in particular, we lack information about the contribution that transitional justice plays in this process. Transitional justice is a loaded term: a political project with specific meanings attached to it. Anachronistically subsuming all reconstructive practices under the nomenclature of ‘transitional justice’ may distort their meaning and misrepresent the ‘foundations and functioning of the societies’ in question. This is not to undermine the importance of ‘everyday’ modes of social repair; on the contrary, understanding these processes is essential – but they do not need the transitional justice label blindly attached to them in order to provide validity or legitimacy. Often links may exist between these processes and local conceptions of transitional justice; but sometimes such links will be harder to substantiate.

¹³⁵ Weinstein and Fletcher, ‘Violence’, p.578

¹³⁶ Kimberly Theidon, *Intimate Enemies: Violence and Reconciliation in Peru* (Philadelphia: University of Pennsylvania Press, 2012).

¹³⁷ Alcala and Baines, ‘Editorial’, p.387

Perfect or relative justice?

Given all of this, how should we conceptualise transitional justice in the Ugandan context? There are, argues Amartya Sen, two basic and divergent approaches to thinking about justice. Both took shape in the enlightenment period, and continue to influence our reasoning today. The first is what he calls ‘transcendental institutionalism’.¹³⁸ This is the approach taken by philosophers as diverse as Thomas Hobbes, Jean Jacques Rousseau, and Immanuel Kant, who were preoccupied with setting out institutional arrangements that would create the most just society. The focus of this tradition was on ‘perfect justice,’ and on ‘getting the institutions right,’ and while much thought was given to the ‘requirements of behavioral norms’ to ensure compliance, this line of inquiry focused on desirable rather than actual behaviors and social interactions.’¹³⁹ Sen distinguishes between ‘transcendental institutionalism’ and what he terms ‘realization based comparison’.¹⁴⁰ The latter, he argues, was the approach taken by thinkers with substantive theories as diverse as Adam Smith, John Stewart Mill, and Karl Marx. Instead of focusing on the attainment of a transcendental and perfectly just society, they were interested in ‘societies that already existed or could feasibly emerge’.¹⁴¹ Despite the apparent relevance of such an approach to the legally pluralistic societies in which transitional justice operates today, it is the first approach, ‘transcendental institutionalism’, characterized as it is by a strongly positivistic trend, which shapes much of the scholarship and practice of contemporary transitional justice.¹⁴²

As the discussion above illustrates, even though there are over-arching legal and normative transitional justice concepts, this does not translate into ‘reasoned agreement on the nature of the just society,’ and, moreover, the search for such agreement is probably elusive, or as Sen would argue, redundant. Thus alternate conceptions that might emerge from the ‘transcendental’ solutions promoted by the universalist human rights ethical and legal architecture should not be understood as perversions of justice simply because they do not meet an ‘unavailable perfect situation’, nor should they be ranked ‘in terms of their respective closeness to the perfect choice’.¹⁴³ Geoff Dancy has

¹³⁸ Amartya Sen, *The Idea of Justice*, (London: Penguin Books, 2009), p.5

¹³⁹ *ibid*, p.5-6

¹⁴⁰ *ibid*, p.7

¹⁴¹ *ibid*, p.7

¹⁴² McAvoy, ‘Legalism’, p.415

¹⁴³ Sen, ‘Justice’, p.16

written about the tendency of scholars, even those working from an interpretative perspective, to ‘self-reflexively’ base judgments about transitional justice in any given context on a ‘maximalist position’, which dictates that justice ‘must be universal, equal and color blind’.¹⁴⁴ Departing from such an approach does not amount to a call for methodological cultural relativism. It is an argument for a *practical* approach, which takes into account imperfect realities, and seeks to acknowledge and interpret and reflect on the plurality of different justice-related claims and principles that have emerged in Uganda since the Juba peace talks began and how, and why, some arrangements are understood as just, while others are perceived as unjust.¹⁴⁵

Conclusion

We have seen how transitional justice emerged as a distinct political and legal project in the late 1980s. It was envisaged and shaped by an epistemic community concerned with both human rights and transitions to democracy. This was against the backdrop of political shifts taking place in Southern Europe, Latin America, Central and Eastern Europe; and South Africa.¹⁴⁶ It was at these profound political and existential turning points that scholars, activists and politicians came together to engineer a relationship between two formless notions: justice, and transition, in the service of a third: democracy. Since that time, the moral and utilitarian elements that were evident in the original transitional justice formulation have been distilled and refracted. As it has migrated across contexts, it has also become professionalized and normalized in a broader post-Cold War political project: that of international liberal peace-building. A key characteristic of this latest phase of transitional justice – as we shall see in Chapter’s 5 and 6 – is the idea that it can be established via a ‘repertoire’ of ‘post-political’, ideologically neutral techniques and projects, even in states that are not undergoing a political transition.¹⁴⁷

The dominant liberal transitional justice paradigm frames the path post-conflict states *ought* to follow, but reality intervenes. On application, and in context, multiple transitional justice conceptions exist and often they challenge, appropriate and subvert

¹⁴⁴ Dancy, ‘Impact’, p.369.

¹⁴⁵ Sen, ‘Justice’, p.9

¹⁴⁶ Hazan, ‘Judging’, p.31

¹⁴⁷ Sharp, ‘Fourth-generation’, p.158

the dominant paradigm. Different transitional justice conceptions can emerge from alternative ideas about the substantive and ontological basis of transitional justice, but they can also be framed as a deliberate attempt to obfuscate responsibility for wrongdoing. International policy makers and donors may try to contain these differences and diversions, but often a lack of knowledge or genuine interest in context impedes this. Meanwhile, the ways in which people and communities are *actually* moving on with their lives in conflict and post-conflict places remains out of focus. In the rest of this thesis we go on to explore these dynamics more closely in the Ugandan context. In order to understand that context it is imperative to provide a historical overview of Acholiland. That is the aim of the next chapter.

3. Law, power and public authorities in Acholiland from pre-colonial times to the modern era

Introduction

As a policy intervention, transitional justice falls within the existing legal realm and broader notions of social order. However battered by war, conflict or poverty these concepts may be and however much they are subject to continuous re-negotiation and mutation, they have in some form existed in the past, have continued into the present, and will shape the future. There is a value, therefore, in trying to understand, through close examination of the available sources, *what came before* in Acholiland, and what the implications might be for the application of transitional justice. What follows is an historical analysis, which examines continuity and change since pre-colonial times, with particular attention to the administration of justice and order, and the formation of Acholi 'identities'. This is not strictly chronological; instead, important themes are addressed under the headings of 'justice traditions', 'conflict and disorder' and 'narratives of social repair'. This chapter answers Adam Branch's call for an analysis that historicises rather than essentialises the Acholi within 'pre-colonial, colonial and post-colonial political and social processes'.¹ This is important because the debate about transitional justice in Uganda has been based on the construction of narratives that justify a particular form of intervention. This involved some 'terrible simplifiers' about the particular 'ways', 'traditions' and 'needs' of 'the Acholi', which were often prescriptive, reductionist and abstracted.²

The first part of this chapter explores the multiple traditions³ of justice in pre-colonial, colonial and post-colonial Acholiland, examining three foundational themes. The first is the abiding presence of what will be described as a form of 'legalism': sets of precedents and ideal normative principles that circumscribe a moral order but have never been written down or 'institutionalised' in the sense of formal organisation. The second is the

¹ Branch, 'Ethnojustice', p.628.

² The term 'terrible simplifiers' is taken from Robert Gordon, 'E.P Thompson's Legacies', *Georgetown Law Journal* 82 (1994), pp.2005-2011, p.2010. In the literature there are many such simplifiers, and they have ranged from the argument that the Acholi do not approve of formal, retributive justice processes, to the argument that 'traditional' justice is largely an 'invention of tradition'. For different interpretations, see: Baines, 'Roco' and Allen 'Trial'.

³ In this context, I borrow Branch's use of the plural '*traditions*', see Branch, 'Ethnojustice', p.618.

administrative division between ‘civil’ and ‘customary’ law first imposed by the colonial authorities. The third is way in which people in Acholiland have adapted and re-imagined systems of social regulation ‘at the margins’⁴, against the backdrop of major systemic and rhetorical political shifts at the state level since the colonial period. This section also introduces the role of spirituality and cosmology as a ‘realm of internal contradiction and struggle’ in the ordering of social and moral worlds.⁵ The remainder of this chapter explores the historical relationship between Acholiland and the central state and the experience of conflict and disorder in modern Acholi history. It charts the coming of the LRA, the devastating consequences of the twenty year war and the impact it had on Acholi moral, political and social worlds. It finishes with a preliminary discussion – developed as the thesis progresses - about the way in which a particular response to that devastation: *transitional justice*, fits with the broad canvas of custom, culture, moral norms, institutional attachments, administrative arrangements and religious and family ties upon which it is grafted.

The multiple ‘traditions’ of justice in Acholiland

Legalism in Acholiland

In the early twentieth century the colonialists expanded the Uganda protectorate to incorporate a large area of country to the north. In 1910 the administration carved out a region which they called ‘Gulu,’ and four years later, in 1914, an adjacent area to the east was annexed and named ‘Chua’.⁶ Together these came to be known as the Acholi district. Because there are no written records of what is now Acholiland from before 1860, material which describes pre-colonial life in the area, particularly that which relies on oral testimonies, is in large part, a manifestation of the construction of an Acholi consciousness.⁷ In recording testimony at different times from the late 1930s to the

⁴ See Ben Jones, *Beyond the State in Rural Africa* (Edinburgh University Press, 2009).

⁵ Branch, ‘Ethnojustice’, p.628

⁶ J.P Barber, ‘The Moving Frontier of British Imperialism in Northern Uganda 1899-1919’, *Uganda Journal*, 29:1 (1965), pp.27-43.

⁷ There are four types of historical source on ‘pre-colonial’ Acholiland: pre-colonial explorer accounts, especially those of John Hanning Speke, Samuel Baker and Emin Pasha; colonial-era manuscripts written by missionaries, colonial authorities and Acholi historians, all with the aim of recording tradition; anthropological works, most notably those of Frank Girling and Okot p’Bitek; and finally, oral histories produced during the post-colonial period, the most comprehensive of which is Ronald Atkinson’s *The Roots of Ethnicity*. There is an important historiographical debate about whether or not the Acholi had a pre-colonial sense of collective belonging. For contrasting views see, Ronald Atkinson, ‘The evolution of ethnicity among the Acholi of Uganda: The pre-colonial phase’, *Ethnohistory*, 36:1 (1989), pp.19-43; Tim

1970s, authors, including the Italian missionary J.P Crazzolaro, the British anthropologist Frank Girling, the Acholi historian Reuben Anywar and the American historian Ron Atkinson, were also making history.⁸ Much of what they document cannot be corroborated, but even if they present distortions of the past, they also records facts of contemporary importance.⁹ This chapter draws upon this material to address a particular conceptual challenge which emerges from the historical sources and remains an issue for transitional justice scholars today: how to best go about understanding a society in which 'law' is not necessarily a discrete process.

Historically, the regulation of Acholi life is well captured by the concept of 'legalism' as described by the anthropologist Paul Dresch and historian Hannah Skoda. Legalism's themes, Dresch argues, include,

'an appeal to rules that are distinct from practice, the explicit use of generalizing concepts, and a disposition to address in such terms the conduct of human life. They do not always coincide with ... a 'legal system'; far less do they account for everything one might call 'law'.¹⁰

Hannah Skoda elaborates, describing legalism as,

'rules that are distinct from practice and rules characterized by the claim to be more than simply spontaneous improvisations, but in some sense often systematic.'¹¹

The historical sources describe systems of prescriptive rules across pre-colonial Acholiland which could be contravened and ignored whilst also remaining valid. This was a system of social regulation informed by a conscious morality which recognised a common standard of behavior, and had its own normative terminology for expressing both the 'oughts' and 'musts' of conformity as well as the moral distinction between right

Allen, 'The Roots of Ethnicity: The Origins of the Acholi of Uganda before 1800 by Ronald Atkinson', *Africa*, 66:3 (1996), pp.472-75; Heike Behrend, *Alice Lakwena and the Holy Spirits: War in Northern Uganda, 1986-97* (London: James Currey, 1999), p.54.

⁸ J. Pasquale Crazzolaro, *The Lwo Part II: Lwo Traditions* (Verona: Museum Combonianum, 1951); Frank Girling, *The Acholi of Uganda* (London: Her Majesty's Stationary Office, 1960); Reuben Anywar, *Acoli ki ker megi (Acholi customs)*, (Kampala: Eagle Press, 1954); Ronald Atkinson, *The Roots of Ethnicity: Origins of the Acholi of Uganda*, 2nd Ed. (Kampala: Fountain Publishers, 2010). For a discussion of oral history in this context, see Tim Allen, 'Histories and Contexts: Using Pasts in the Present on the Sudan/Uganda Border', *Bulletin of the John Rylands Library*, (n.d).

⁹ Okot p'Bitek argued along these lines see: Okot p'Bitek, *Artist the Ruler*, (Kampala: East African Educational Publishers, 1986), p.42; Girling, in 'Acholi', p.151, makes similar point.

¹⁰ Paul Dresch 'Legalism, Anthropology, and History: A view from Part of Anthropology', in Paul Dresch and Hannah Skoda (eds.), *Legalism: Anthropology and History* (Oxford: Oxford University Press, 2012), pp.1-39, p.1.

¹¹ Hannah Skoda, 'A Historian's Perspective on the Present Volume', in Dresch and Skoda, 'Legalism', pp.39-55, p.39.

and wrong.¹² The social units that the sources refer to were filled with meaning that went beyond the descriptive. So, for example, as Dresch writes, ‘one has to have an idea of kinsmen and of what they should do’, as distinct from personal experiences of a brother or a cousin, before one can ‘complain of them for not doing it’.¹³ These rules are not always necessarily ‘legal’, but they provide ‘a programme for living together’ and a ‘public view of wrong, as distinct from private discomfort’.¹⁴

Before colonial times legalism appeared to work ‘sideways,’ in the sense that it was regulated by a series of relationships, rather than by a state.¹⁵ There was not one centre of authority, but many, and their relationships were overlapping. In what is now Acholiland there were perhaps as many as 70 chiefdoms consisting of patrilineal village groupings or clans (*kaka*).¹⁶ Sources note that an important characteristic of these domains was the ‘limited power and authority of those at their head’.¹⁷ These royal chiefs, or *Rwodi Moo*, shared their political power with lineage heads (*ladit kaka*) of the numerous clans, some royal and some ‘commoner’.¹⁸ There were other important figures too. The *Won Ngom*, for example, was responsible for taking care of the spirit shrine of the chiefdom (*abila*), and the *ajwaka* was a medicine man or herbalist who the *Rwot* would have consulted about the ancestral and other spirits (*joke*) which were responsible for the fertility of the land, the health of the people, and success in hunting and war.¹⁹

Allegiance to the royal chief, was based on what his rulership could offer in terms of collective security and defence.²⁰ The lineage head was the ‘principal authority’ on the *ongon*, which was the collection of precedents passed down orally from one generation to the next. It regulated relationships within and between villages in the same chiefdom.²¹ But if the lineage head and his elders were unable to resolve disputes then the *Rwot*, or

¹² Herbert Hart, *The Concept of Law*, 2nd ed. (Oxford, Clarendon Press, 1994), p.57; Dresch, ‘Legalism’, p.12.

¹³ Dresch, p.36-7.

¹⁴ Dresch quotes Lon Fuller here. See, Dresch, ‘Legalism’, p.12.

¹⁵ Skoda, ‘Historians’, p.51

¹⁶ Atkinson, ‘Evolution’, p.21.

¹⁷ John Milner Gray, ‘Acholi History, 1860-1901’, *Uganda Journal*, 15:2 (1951), pp.121-143, p.113; R.M Bere, ‘Land and Chieftainship Among the Acholi’, *Uganda Journal*, 19:1 (1955), pp.49-56; Atkinson, ‘Origins’, p.84; Girling, ‘Acholi’, p.12-3.

¹⁸ Atkinson, ‘Origins’, pp.84-87.

¹⁹ Girling p.97. Girling points out that sometimes the *ajwaka* would also have been the ‘father of the soil’, p.123.

²⁰ Okot p’Bitek, *Religion of the Central Luo* (Nairobi: East African Literature Bureau, 1971), p.36; Atkinson, ‘Origins’, p.85. Dresch, ‘Legalism’, p.33.

²¹ Girling, ‘Acholi’ p.64; Atkinson, ‘Origins’, p.77.

one of his representatives, was expected to step in and arbitrate.²² If a villager refused to accept the decision of an elder or a *Rwot*, he might choose to relocate, perhaps with other members of his family, to another village, or chiefdom, where he had kinsmen.²³ In other instances powerful *Rwodi*, particularly those who could rely on the coercive force of 'superior numbers,' might seek to exile dissenters. General acceptance of concepts of right and wrong legitimated exclusion.²⁴ An early colonial administrator would later write about 'turbulent spirits' who were 'either repressed or left the village'.²⁵

Every author writing about political and social order in pre-colonial Acholiland acknowledges the difficulties involved in using oral histories and/or provides examples of pre-colonial polities being governed in very 'non-ideal' and violent ways, particularly as *Rwodi* began allying with Turko-Egyptian slavers and ivory hunters in the mid-19th century.²⁶ Nevertheless, without resorting to 'degenerate' and deterministic conceptions of culture, we can begin to identify at least two relational and symbolic notions present in historical narratives which correlate with the way in which social and moral order is regulated in many parts of Acholiland even today. The first was that public authorities derived legitimacy from their moral values and their ability to maintain order by consent rather than by coercion.²⁷ They were expected to demonstrate an ability to regulate order in a way that broadly guaranteed their community's protection in their everyday lives. Thus, as Sverker Finnström points out,

'Acholi mythology and tales often stress that the power of the chief can never be absolute. He must earn his position and demonstrate his ability to lead his subjects'.²⁸

This ties in with the second notion: the existence of a set of precedents and ideal normative principles that circumscribed a moral order but were not coagulated into a fixed body of law with associated sanctions. The anthropologist Frank Girling who was

²² Atkinson, 'Origins', pp.84-85; Girling, 'Acholi', p.64; p.124; Reuben Anywar, notes that the Payira chiefs could and did develop new rules during arbitration, see Reuben Anywar, 'The life of the rwot Ibrahim Awich', *Uganda Journal*, 12:1 (1948), pp.72-81.

²³ Girling, 'Acholi' p.64; Atkinson, 'Origins', p.84.

²⁴ This happened particularly with murder cases; Dresch, 'Legalism', p.33.

²⁵ H.F. Morris, 'Two Early Surveys of Native Courts in Uganda', *Journal of African Law*, 11:3 (1967), p.159-74, p.171.

²⁶ See for example, Allen, 'Histories', p.74,. For reference to accounts of the impact of Turko-Egyptian raids across the what is now Acholiland, see John Gray, 'Acholi History, 1860-1901 (Part 1)', *Uganda Journal*, 15:2 (1951), pp.121-143.

²⁷ Holly Porter, describes the idea of 'moral jurisdiction' in relation to Acholiland, see Porter, 'After', p.112-117.

²⁸ Finnström, 'Surroundings', p.243.

doing his fieldwork in Acholiland in 1949, wrote of the absence of a ‘formally recognised body of laws’ that ‘regulated the behavior of all inhabitants of a domain towards one another’,²⁹ and yet there did, and still does, exist a moral discourse – a ‘set of homilies’, expressing, *in context*, the idea of justice.³⁰ Girling gave the example that whereas a *Mato Oput* ceremony would take place after a killing between villages in the same chiefdom, murders that took place within villages could not be compensated for because of the communal nature of economic life, and usually ended up with the expulsion of the perpetrator.³¹ This indicates a moral and social notion of what should happen under similar circumstances across space and time, which constitutes a view of life that was, and is, more complex than just the personal relationships between neighbours and kin. It hinges not just on the wrongdoing and the form of punishment, but also on the extent to which the case affects the ‘rest of life’. The anthropologist, Holly Porter, writing about Acholiland in the modern period, has emphasized the importance of ‘social harmony’ as the ‘primary moral imperative in the wake of wrongdoing’.³² This, she describes as something akin to the Acholi concept of ‘*piny maber*’ or ‘good surroundings’.³³ It represents, in essence, a shared desire for a,

‘state of normal relations among the living and the dead, linked to an idea of cosmological equilibrium and a social balance of power and moral order’.³⁴

In practice, this can be attained through violent and exclusionary acts or through peaceful and forgiving acts. The approach is usually contingent on the wrongdoer, the wrongdoing and the broader cosmological, and social implications of both to the wider community.

This has been as perplexing to modern day development and human rights workers as it was to the first colonial administrators. The past shares with the present the concern that Acholi ‘legalism’ lacks a ‘theory of law’ of the sort that shapes modern state-centered legal systems. Thus, people are subjected to a form of ‘law in action’, a system of forms and rules which ‘typically define wrongs by circumstance’ rather than by jurisprudence.³⁵ The colonial conceit, which it remains hard to escape from today, was the anachronistic

²⁹ Girling, ‘Acholi’, p.6

³⁰ Dresch, ‘Legalism’, p.23

³¹ Girling, ‘Acholi’, p.67

³² Porter, ‘After’, p.3

³³ Porter, ‘After’, p.15

³⁴ Ibid.

³⁵ Skoda, ‘Historian’s’, p.43

use of legal terms and concepts to understand legalism, as if, writes Dresch, 'law and the state were always waiting to be born'.³⁶ Writing in 1926 about 'indigenous' aspects of law, the District Commissioners of both Gulu and Chua intimated a sense of discomfort with the fact that these processes seemed to be based as much on politics and chance as on the law.³⁷ For them 'indigenous systems' had no formal explanation for their place in society.³⁸ In 1926, the Provincial Commissioner of the Northern Province, E.B Haddon, dismissed the 'law of the clan' as 'that of public opinion'.³⁹ J.P Postlethwaite, the first colonial administrator of Gulu district, later wrote in his memoirs that 'we meted out justice according to our own ideas without having, I fear, much real appreciation of natives' own traditions' which he also referred to as the 'tribal under-life'.⁴⁰ The more politically correct modern desire to 'blunt' the seemingly arbitrary edge of 'customary justice' is similarly rooted in a failure to engage with different understandings of what law is, or 'what is know-able, say-able, and do-able about the law' in Acholiland.⁴¹ Thus in situations of legal and normative pluralism, external observers have tended to attribute meaning to actions, such as a preference for a particular ritual, while the inter-subjective discourse that reveals itself through those actions is neglected, often leading to policy prescriptions, (as will be demonstrated in chapter five), that fail to take root or lack relevance locally.⁴² This has been particularly noticeable in transitional justice promotion, where the focus is on traditional 'mechanisms' and 'processes' rather than the meaning systems that inform whether or not they can address the issue at hand.⁴³

The colonial encounter

In the following sections we retreat back into history and explore some of the meta-shifts that have occurred since colonial times and the different systems of justice, law and order, that each brought in its wake. Stephen Humphreys has carefully identified the 'habits, techniques and themes of the colonial period' which, he posits, 'remain in the genetic makeup...of contemporary transnational legal development', of which

³⁶ Dresch, 'Legalism', p.35

³⁷ Morris, 'Surveys'

³⁸ Ibid.

³⁹ Dresch, 'Legalism', p.15 Morris, 'Surveys', p.171.

⁴⁰ J.P Postlethwaite, *I Look Back* (St Albans: Staple Press Limited, 1947), p.37; p.45.

⁴¹ Gauri et. al, 'Intersubjective', p.165; Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Late Colonialism* (Princeton: Princeton University Press, 1996), p.163.

⁴² Ibid.

⁴³ There is, for example, a strong tendency in the literature on traditional justice in northern Uganda to 'codify' traditional rituals. See Chapter 1, ft.79.

transitional justice is a part.⁴⁴ An abiding continuity has been the identification and remolding of indigenous systems, backed up by ‘formal institutional machinery that broadly imitated western equivalents’.⁴⁵ This is explored in detail in Chapters 5 and 7, what follows a description of the historical pre-cursors of this form of ‘legal export’ in Acholiland.⁴⁶ Scholars have written extensively about the ‘artificiality of the native court system’ imposed by the colonialists across British African territories, and how ‘little basis it had in the customary law that it aimed to ostensibly uphold’.⁴⁷ Colonialism challenged legalism in Acholiland in fundamental ways. The colonial system of native administration and indirect rule, ‘transformed cultural identity into political identity and ethnicity into tribe’ writes Mahmood Mamdani.⁴⁸ It is the point of reference around which subsequent historical and political narratives were re-inscribed. Colonialism did not erase or eclipse everything that came before it, but it detached the past from the present in an unprecedentedly dramatic way. A state was imposed, markets were introduced, and social relations were re-regulated, impacting significantly on both gender and generational relations.⁴⁹ In the process, as Frank Girling described, forms of organization were both ‘forcibly removed from above’ and ‘disintegrated from below’.⁵⁰ The duty-based principles of legalism were officially de-legitimated while the development of ‘law’ as an institution, and the enforcement of a legal apparatus, became a key means of social control. What marked this period was the imposition of a new power system conjugated to a new legal culture.

The British colonial rule that took shape across Africa after the Berlin Congress was called ‘indirect rule’, although, as Mamdani points out, it largely coexisted with elements of ‘direct rule’; ‘the civilizing mission (assimilation)’ he writes, ‘existed alongside the management of difference (pluralism)’.⁵¹ Indirect rule was pragmatic. It made sense in the far-flung reaches of the empire, where resources and personnel were few, that the bulk of administrative duties should be devolved to ‘natives’. The colonial logic of native institutions, in turn, valorized the language of pluralism. Five years after the Indian Mutiny the British barrister Henry Maine published his hugely influential book *Ancient*

⁴⁴ Stephen Humphreys, ‘Laboratories of Statehood: Legal Intervention in Colonial Africa and Today’, *The Modern Law Review*, 75:4 (2012), pp.475-501, p.504.

⁴⁵ Humphreys, ‘Laboratories’, p.508.

⁴⁶ Humphreys, ‘Theatre’, p.17.

⁴⁷ Humphreys, ‘Laboratories’, p.508

⁴⁸ Mahmood Mamdani, ‘What is a tribe?’, *London Review of Books*, 34:17 (2012), pp.20-22.

⁴⁹ Mamdani, ‘Citizen’, p.119.

⁵⁰ Girling, ‘Acholi’, p.193.

⁵¹ Mamdani, ‘Tribe’.

Law, in which he appealed for a clear distinction to be made between ‘universal civilization’ and ‘local custom’, based on a better understanding of ‘historicity and agency of the colonised’.⁵² In Uganda, as elsewhere, the pluralism that came to shape the system was divisive. It embedded a parochial separatism that juxtaposed a universal and progressive civil law for ‘non-natives’ with different systems of customary law for ‘natives’.⁵³ The latter was bound, ostensibly, by ‘culture,’ and stuck in history.

Maine’s original appeal had been for a closer understanding of the local and the intimate. In Acholiland, though, the local was seen, at worst, as a place of ‘lack,’ and at best as a place of transition. What it *ought* to be transitioning towards, according to the colonial administration, was a ‘native’ system more like that which existed in the Bantu-speaking South, where chiefs held significant power and pre-colonial courts had operated.⁵⁴ The answer was to disregard hereditary chieftainship and install ‘well chosen, outstanding Acholi’, to take up the position of Chief, ‘in the government sense of the term’.⁵⁵ These chiefs were referred to in Acholi as *Rwodi Kalam*, ‘chiefs of the pen’. The system, Kagumire argues, ultimately worked, ‘not because it was initially acceptable, but because the British had the physical force to back up their appointees’.⁵⁶ In 1919, the Native Law and Native Authority Ordinances were introduced. Subject to the District Commissioner’s supervision, the Ordinances conferred jurisdiction to salaried chiefs over all ‘Africans’ in their territories, concerning matters relating to ‘native law and custom’.⁵⁷ These new guardians of law and order, sitting in native courts, which, in Acholiland, unlike in other parts of the protectorate, had to be established ‘*ab initio*,’ exercised their judicial powers at district, county and sub-county level.⁵⁸ By the time Acholiland had come under what Postlethwaite would later term ‘modern administration’, the judicial

⁵² *ibid*, p.20.

⁵³ Mamdani, ‘Citizen’

⁵⁴ Postlethwaite, ‘Look’, p.50; Samwiri Karugire, *A Political History of Uganda*, (Kampala, Fountain Press, 1980), p.123

⁵⁵ Postlethwaite, ‘Look’, p.56-7; Bere, ‘Land’, p.50-51

⁵⁶ Kagumire, ‘History’, p.125

⁵⁷ H.F Morris and J.S Read (eds.), *The British Commonwealth: The Development of its Laws and Institutions, Vol. 13, Uganda* (London: Stevens and Sons, 1966) p.35. Certain types of cases were removed from native court jurisdiction, including murder and manslaughter, cases involving government employees, and cases where offences were committed in townships. In the northern province the native courts were also prescribed maximum punishments with regards fines, prison sentences, and corporal punishment. See Morris and Read, ‘British’, pp.41-42; H.R Hone, ‘The Native of Uganda and the Criminal Law’, *Journal of Comparative Legislation and International Law*, 21:4 (1939), pp.179-197, p.188-9; Morris, ‘Surveys’, p.160.

⁵⁸ Cherry Gertzel, *Party and Locality in Northern Uganda, 1945-62* (London: Athlone Press, 1974), p.7; Morris and Read, ‘British’, p.39. There are no statistics for Acholiland alone, but in 1936, the central government courts in the Protectorate tried 7695 cases, both criminal and civil, while during the same period, the native courts tried 103, 665 cases, see Hone, ‘Native’, p.190.

system in Uganda was the archetypal 'bipolar' structure that Mamdani writes about in reference to the British African territories.⁵⁹

So what was the 'native law and custom' of Acholiland according to the native courts? What is striking in colonial accounts is the apparent lack of engagement with, or interest in, the substantive nature of so-called customary law. The legal scholar, Julius Lewin, writing in 1944, lamented that 'we know little more now about the substance of native law than we did when these courts were first set up'.⁶⁰ Mahmood Mamdani's argument about the motives of colonial administrations throughout the British African territories is highly relevant here:

'As they sought out controllers of society, the search for good laws gave way to one for effective authorities. As they came to appreciate the possibilities of control in the customary, their interests focused more on customary authorities than on customary law. As the substance of law was subordinated to the quest for order, the claim to be bringing 'the rule of law' to Africa became handmaiden to the imperative to ground power effectively.'⁶¹

The Attorney General of Uganda, H.R Hone, wrote in 1939 that the dispensation of justice in the northern region was 'ill defined and primitive,' and as a result district officials were given greater discretionary powers to 'supervise' and 'guide' its court system.⁶² That these were actually modern courts for modern purposes was not lost on the E.B Haddon, the Provincial Commissioner, who, in 1926 noted that,

'the community is now more complicated; people have moved about and have left the old clan authority...a regular system of courts becomes necessary to deal with such crimes and to produce a common law which supersedes public opinion'.⁶³

So long as there was a single authority of custom, in this case, the chief, and so long as the chief was answerable to the District Commissioner, he was very welcome to enforce his version of custom as law. In 1926, the District Commissioners of Gulu and Chua were asked by the Chief Secretary of the Colonies to provide information about the law that native courts administered and how it was 'ascertained'.⁶⁴ Both answers were tellingly vague. In Gulu, the District Commissioner wrote only that:

⁵⁹ Mamdani, 'Citizen', p.109; p.113

⁶⁰ Julius Lewin, 'Native Courts and British Justice in Africa', *Africa*, 14:8 (1944), p.448-453, p.448

⁶¹ Mamdani, 'Citizen', p.121

⁶² Hone, 'Native', p.180.

⁶³ EB Haddon, dated 7 April 1926, extract printed in Morris, 'Surveys', p.170.

⁶⁴ Morris, 'Surveys', p.167

‘native custom so far as not repugnant to natural justice and as whittled down by administrative influence and judicial supervision. This is well known to all attending the court. Native custom is as definite, neither more nor less, as English common law.’⁶⁵

In Chua, the District Commissioner was even less clear: ‘native customary law is administered which is ascertainable by consultation with chiefs and prominent men’.⁶⁶ Neither Commissioner, when asked, recommended separation of the administrative and judicial functions of the chiefs, stating that it would be both impossible and futile. In any case, the colonial administration had a safeguard in place, the so-called ‘repugnancy clause’, which stated that chiefs could continue to exercise their ‘ancient powers’ so long as the ‘jurisdiction they exercised was not repugnant to natural justice and morality or to the specific laws of the Protectorate’.⁶⁷

Post-colonial period

Overall, the bi-polar architecture of the Ugandan justice system changed very little throughout the colonial period and into independence (although, as shall be argued below, the procedures governing their constitution became gradually more democratic). The African Courts Ordinance of 1957 (later amended as the African Courts Act of 1962) officially renamed the native courts as ‘African courts’.⁶⁸ The Africa Courts Act made it clear that no lawyer or advocate could represent any party before an African Court. Continuing the logic of the colonial period, it was argued that the added value of the courts was they administered a ‘simple’ law by a procedure that people understood and could access easily. The involvement of lawyers, it was argued, would add unwanted complexity to matters.⁶⁹ Even today, the Acholi sub-region has only one High Court, based in Gulu, and two chief magistrates’ courts, in Gulu and Kitgum, and case backlogs are severe.⁷⁰ Despite some academic and political interest in attempting to unify substantive English and ‘customary’ law into a single canon, this never happened in

⁶⁵ Ibid, p.172

⁶⁶ ibid

⁶⁷ Hone, ‘Native’, p.188

⁶⁸ The practice and procedure of the African Courts was to be regulated in accordance with customary law, subject to guidance by Statute law, so for example, the 1960 African Court Rules outlined the procedure which African Courts were now obliged to follow in their handling of criminal and civil cases and these were, in simplified form, those that were practiced in Central Government courts. The High Court became the appeal court immediately above the African district court. See Morris and Read, ‘Development’, pp.204-8

⁶⁹ ibid.

⁷⁰ Author interview with Muwaganya Jonathan, Resident State Attorney, Directorate of Public Prosecutions, Gulu, 27.09.2012

Uganda.⁷¹ On independence in 1962, the reasons why were practical: it would have required a huge number of professional jurists, and Uganda did not possess the resources to train them.⁷² Before long, the independent state came to see the advantages of cheap, accessible customary courts. Anti-colonial desires for a unified legal system that would re-capture the ‘customary’ from colonial perversions were eclipsed by a ‘triumphant modernism’ which regarded the modern court system as the ultimate objective, but accepted, just as the H.R. Hone had done in the 1940s, that the conditions for its emergence were not yet ripe.⁷³

The solution in the immediate post-colonial period was to see ‘the customary’ as a ‘compromise, inevitable but hopefully temporary’.⁷⁴ Indeed Milton Obote, Uganda’s first Prime Minister centralised power and undermined the autonomy of local courts and councils. Under Amin’s military state, these institutions were banned altogether.⁷⁵ When the NRM came to power, there was a major narrative shift. The ‘customary’ and ‘local’ were valorised again as part of an internationally praised decentralization agenda. The NRM’s 1995 Constitution expressed a vision of popular participation in the administration of justice. Local village (LC1) and parish council courts (LC2), constituted by the elected members of their executive committees, were mandated to try a broad range of civil and criminal cases that could also be referred to larger sub-county (LC3) courts. The LC system was supposed to deliver a more equitable and inclusive form of state power in local spaces. In developmental parlance, this was ‘decentralisation’ policy at its best and most ‘far-reaching’.⁷⁶ Scholars working in southern parts of the country argued that the system was giving people their first real and direct experience of democratic politics, and that the relationship between state and society had been completely transformed.⁷⁷ In Acholiland, though, this new experiment in local government and local justice was very different. From the late 1980s, the local

⁷¹ In 1953 the ‘creative blending of creative and customary and modern law’ was the topic of discussion at a Judicial Advisers Conference at Makerere University in Kampala, for example. See, Mamdani, ‘Citizen’, p.128.

⁷² Mamdani, ‘Citizen’, p.129-132; Morris, ‘Uganda’, 393-412.

⁷³ Mamdani ‘Citizen’, p.131; Hone, ‘Native’.

⁷⁴ Mamdani, ‘Citizen’, p.131.

⁷⁵ See, Frederick Golooba-Mutebi, *Collapse, War and Reconstruction in Uganda*, Crisis States Research Centre, Working Paper 27 (January, 2008).

⁷⁶ Jones, ‘Rural’, p.63

⁷⁷ See for example Mikael Karlstrom, ‘Imagining Democracy: Political culture and democratization in Buganda’, *Africa* 66:4, (1996).

councils, along with Local Defence Units (LDUs),⁷⁸ became perceived and real agents for NRA counter-insurgency against the LRA. Cooperation and loyalty were enforced through purges of members suspected of being rebel supporters, and thinly veiled threats equated opposition to government military tactics with support for the LRA.⁷⁹ Rather than providing oversight of the NRM/A, in Acholiland the LCs had 'localised' the state down to the village level, and had come to represent 'political oppression' and 'petty harassment'.⁸⁰

Life at the margins: Continuity and Change

The previous sections paint a picture of often violent change and the imposition of authority structures in Acholiland since the colonial period. This section describes the various, myriad ways in which waves of political change and new authority structures have been negotiated, evaded, and often hybridized with pre-existing methods of social regulation in the Acholi context. While it is certainly true that the 'law' has been cynically deployed and manipulated by political elites ever since the colonial period, it is important to take note of E.P Thompson's famous assertion that the law does not keep 'politely to a level' but is at 'every bloody level'.⁸¹ The law may have been, as Mamdani argues, a method of social control during the colonial era and subsequently, but it played many other social roles, depending of the standpoint of the observer. The 'Acholi' were not just the trampled upon subjects of colonial oppression, statism, militarization and NRM subjugation: some cooperated willingly with each new system and exploited new opportunities for power and resources; others resisted them wholly but in a way that demonstrated agency and new ideas about how to adjust to modern circumstances. Thus social order, law and morality have been negotiated in heterogeneous ways 'at the margins' in Acholiland during periods of great political and social upheaval.

Despite contemporary colonial assertions about 'pacifying' the Acholi, and successfully 'teaching' the 'primitive natives' to be 'government men', many people resented and resisted the imposition of chiefs and their unpopular administrative directives.⁸² It was a criminal offence not to obey their orders, and people were well aware that decisions

⁷⁸ The Local Defence Units are groups of local residents who are recruited by the Resident District Commissioner to 'augment' the work of the UPDF and the police.

⁷⁹ Branch, 'Exploring', p.39; Finnström, 'Surroundings', p.94

⁸⁰ Branch, 'Exploring', p.40

⁸¹ E.P Thompson, *The Poverty of Theory and Other Essays* (London: Monthly Review Press, 1978), p.96.

⁸² For accounts, see, Bere, 'Land', p.51; A.B Adimola, 'The Lamogi Rebellion, 1911-12', *Uganda Journal*, 18:2 (1953), pp.166-177; Postlethwaite, 'Look', p.58; p.65; Anywar, 'Awich', p.42.

made by a chief in his courtroom would be backed up, if need be, by the ‘excessive force’ of the colonial government.⁸³ Writing in 1917, the Provincial Commissioner of the northern region stated that,

‘if the villagers are going to resist the authority of the chiefs, every action must be taken and a good lesson given so that others will not follow suit’.⁸⁴

Despite administrative reforms, not much had changed by 1950 and the process and methods of punishments in the native courts remained deliberately severe. One divisional chief, in whose court Girling had sat for days ‘watching him mete out beatings, fines and imprisonment’, admitted that,

‘ “we must rule by fear. The people are lazy, they do not realize what good things the Government is doing for them. How can we Acholi progress unless we grow cotton, pay our taxes and dig latrines as the Government want us to do?”’.⁸⁵

Girling continues that ‘the District Commissioner agreed, admitting that ‘fear was still the main sanction of the government’.⁸⁶ Girling’s own impressions were ambivalent. On the one hand he found those who shared the opinion of the old man who celebrated the fact that ‘today there is law in the whole country, no-one is killed by his enemy or robbed without someone being punished’.⁸⁷ Sections of Acholi society clearly recognized the benefits that the new system offered.⁸⁸ Girling wrote about a ‘new social and political class’ of Acholi, mainly drawn from the commoner lineages, who migrated to the Catholic and Protestant missions when they were first established, learnt English, and were the first to become priests, government chiefs, teachers, and administrative clerks. It was from their ranks that a small cadre of traders and small businessmen emerged, and it was the sons and daughters of this socio-economic group who held ‘the most important positions open to Africans’ in Acholiland and were the ‘first to react against the limitations of the old order’.⁸⁹

⁸³ Mamdani, ‘Citizen’, p.119.

⁸⁴ Quoted in, Frederick Odoi-Tanga, *Politics, ethnicity and conflict in post independent Acholiland, Uganda, 1962-2006*, PhD Thesis, University of Pretoria (2010), p.109.

⁸⁵ Girling, ‘Acholi’, p.198.

⁸⁶ Girling, ‘Acholi’, p.198. Writing in 1926, the District Commissioner of Chua cautioned the colonial government that the powers of the chief were ‘ample’ and that it would be ‘inadvisable to increase them’, see Morris, ‘Surveys’, p.173.

⁸⁷ Girling, ‘Acholi’, p.186.

⁸⁸ Rosalind Shaw, ‘The production of ‘forgiveness’: God, Justice and State Failure in postwar Sierra Leone’ in Kamari Maxine Clark and Mark Goodale (eds.) *Justice in the Mirror: Law, Power and the Making of History* (Cambridge and New York: Cambridge University Press, 2009) pp. 208-226, p.215-6.

⁸⁹ Girling, ‘Acholi’, p.187-89.

Girling's overwhelming sense, however, was that the colonial government were 'little more than police', and that people, where possible, would circumvent the jurisdiction of the chief in the settling of disputes and turn to 'friends and close kin without either the knowledge or consent of the British officials'.⁹⁰ One of his respondents explained that, 'it is only through their ignorance of what goes on...that the officials do not prevent it'.⁹¹ The 'jural' authority of the head of the household, *won*, remained the most widely accepted and practiced form of social regulation, and Girling explained that part of his role was to punish dependents for their misdemeanours.⁹²

Less than ten years after independence was declared, in 1971, Idi Amin's attack on the Acholi (described in more detail below), witnessed a similar pattern of disavowal and recoiling from aggressive central state authority. The anthropologist Aidan Southall wrote that for the 'masses of ordinary people' living under Amin, the choice was between joining the system or 'withdrawing as far as possible from notice and keeping a low profile'.⁹³ The majority, he argued, took the latter route and life in rural areas was largely self-regulated.⁹⁴ Ben Jones points out that re-centralisation of local powers under Obote and militarization of those powers under Amin concealed the fact that 'central government was relatively haphazard in its administrative reach' and that there were 'practical continuities locally which made the differences from one government to the next appear less remarkable to the villager with a ... dispute, than to the historian of the Ugandan state'.⁹⁵ Two recent anthropological studies, the first by Holly Porter and the second by Erin Baines and Lara Gauvin, describe in detail the continued significance of intra-family and intra-clan discipline and the powerful authority that heads of families and households still exercise today in matters ranging from domestic and sexual violence to the land rights of children born in LRA captivity.⁹⁶ As Porter argues in relation to

⁹⁰ *ibid.*

⁹¹ Girling, 'Acholi', p.199.

⁹² *ibid.*, p.32-3.

⁹³ Aidan Southall, 'Social Disorganisation in Uganda: Before, During and After Amin', *Journal of Modern African Studies*, 18:4 (1980), pp.627-656, p.644.

⁹⁴ *ibid.*

⁹⁵ Jones, 'Beyond' pp.78-79; a recent *Journal of Eastern African Studies* special edition on Uganda Idi Amin contains several articles that make a similar point, see in particular, Derek Peterson and Edgar Taylor, 'Rethinking the state in Idi Amin's Uganda: the politics of exhortation', *Journal of Eastern African Studies* 7:1 (2013), pp.58-82.

⁹⁶ Porter, 'After', p.40-1; Erin Baines and Lara Gauvin, 'Motherhood and Social Repair after War and Displacement in Northern Uganda', *Journal of Refugee Studies*, 27:2 (2014), pp.282-300.

rape cases, in the very rare instances in which this is reported to the police it was usually because relatives of the victim sanctioned such an approach.⁹⁷

While relatives and clan elders remained central to dispute resolution and social ordering, other local authority structures emerged during this period. Indeed authority structures during the colonial period were not just imposed from the top. People began to re-order their own established systems locally. The early colonial policy of forced displacement, introduced in part to deal with the sleeping sickness epidemic, and in part to ease administrative burdens by moving people closer to main roads, dispersed many of the old village lineages.⁹⁸ While some areas were more disrupted than others, by the time Girling arrived in Acholiland in the late 1940s it was common for neighbours not to be kinfolk. In light of these new arrangements, new social systems of agricultural production were organised, 'spontaneously and without either the knowledge of the British Administrative Officers or the encouragement of local Chiefs'.⁹⁹ At the apex of this new system stood what are still known today as 'chiefs of the hoe,' (*Rwodi Kweri*), who were responsible for organising the rotation of co-operative work parties (*awake*) in the fields of each local group. The *Rwodi Kweri* had a retinue of guards, messengers, and clerks, and had sanctions at his disposal if members did not obey orders.¹⁰⁰ What emerged were a set of ties and regulations based on neighbourhood and proximity, rather than solely on kinship.

In modern Acholiland these patterns of negotiation and re-negotiation of micro-level social and political arrangements has continued. As noted above, the formal institutionalisation of local authority under the NRM, in the shape of the LC1 (village) and LC2 (parish) systems, was viewed with suspicion by the Acholi population during the long years of war and displacement. Since 2006, however, people have been returning to their villages in large numbers and the LC1 village courts, conducted as community meetings, have become an 'embedded' and widely used form of justice.¹⁰¹

⁹⁷ Porter, 'After', p.138.

⁹⁸ Postlethwaite, 'Look', p.66; Girling, 'Acholi', p.83

⁹⁹ Girling, 'Acholi', p.192-3

¹⁰⁰ Women also set up similar organisations. Girling wrote that 'there is a *Rwodi Mon* and she has her staff which organize the women's work parties for weeding, cutting firewood and gathering thatching grass', p.193

¹⁰¹ Jones, 'Beyond', p.78

Today they are staffed by villagers who are trusted members of their community.¹⁰² Indeed recent studies by Hopwood and Atkinson argue that the ‘self-regulating’ character of Acholi rural communities has ‘re-asserted’ itself in the short period since the end of displacement, particularly in relation to land disputes.¹⁰³ Despite the LC1 and LC2 systems existing as a hybrid mixture of state and local authority, the *form* of justice dispensed, is guided by the ‘legalism’ described above and is linked strongly to Porter’s notion of ‘social harmony’. As Hopwood argues, it is based on ‘custom’ in the sense that ‘identification of wrongdoing, process of decision-making, and ideas of appropriate resolutions’ are not based on state law or notions of formal justice.¹⁰⁴

A fundamental form of social and moral regulation not yet touched upon is the role played by both religion and the spirit world in Acholiland. Like other forms of authority and accountability, it is both abiding and subject to constant mutation. During the colonial period, spiritual and ritual life continued to ‘make sense out of misfortune,’ and to provide avenues for social accountability, even if the arbiters of Acholi cosmology were changing. In 1939 the Catholic missionary Alfred Malandra observed the presence of an *abilia* or ancestor shrine in every village he visited, noting that ‘it may truly be called the centre of their religious worship’.¹⁰⁵ In the late 1940s Girling wrote that even the Protestant and Catholic mission villages had failed to make ‘inroads into the traditional ancestor cult, which is observed by almost all Acholi, whether or not they are Christians’.¹⁰⁶ This terminology was later critiqued by Okot p’Bitek who, in the *Religion of the Central Luo*, offers the most detailed description of Acholi religious beliefs. In his book he describes a belief that the spirits of departed souls, and especially ancestral kin, continue to have relevance, playing roles in the world of the living such as punishing contraventions of moral order, and thus must be both remembered and respected. As p’Bitek explains, historically there have been two different forms of spirit in Acholi, each existing independently of the other (*jok* singular; *jogi* plural). Chiefdom *jogi* were ancestral and chiefs, lineage elders and the *won ngom* mediated the relationship between these spirits and their people. Free *jogi*, meanwhile, represented forces from outside, and could be

¹⁰² Porter, p.85-6; The LC1 courts are discussed in more detail in Chapter 8 and their constitutional status is also explored.

¹⁰³ See Hopwood and Atkinson, ‘Mapping’; Julian Hopwood, *Customary land, public authorities and the reform agenda: the background to two reports from northern Uganda* (forthcoming, on file with author).

¹⁰⁴ Hopwood, ‘Customary’.

¹⁰⁵ Alfred Malandra, ‘The Ancestral Shrine of the Acholi’, *Uganda Journal*, 7:1, (1939), pp.27-34, p.27

¹⁰⁶ Girling, ‘Acholi’, p.187

mediated either through the *ajwaka*, who worked on behalf of private clients for positive purposes, or by malevolent witches and sorcerers for destructive ends.¹⁰⁷

Anthropological writings point to the large number of female *ajwaki* consulted in times of sickness and trauma, and the increasing incidences of free '*jok*' possession from around the 1950s onwards, linked to external pressures.¹⁰⁸ The new *jogi* were seen as more violent, more destructive and less manageable than the chiefdom *jogi*.¹⁰⁹ Tim Allen argued that the possession of women by 'free' ghosts in Acholi and other parts of northern Uganda, and the 'terrifying activities of the sorcerers', were both associated with the,

'decline in the authority of ritual elders, bewildering social change, and the manifest incapacity of the ancestors to alleviate epidemics of previously unknown diseases'.¹¹⁰

Indeed the proliferation of *free jogi* also led to a proliferation of accusations of witchcraft during the colonial period. For many lineage-based elders this provided a means of reasserting their traditional authority, and Heidi Behrend highlighted the internal tensions between 'rich and poor, elders and young men, and women and men' that such accusations produced.¹¹¹

Christianity was largely absorbed into the broader 'ideological superstructure' of Acholi social life. Early Christian missionaries regarded reverence for the spirits as satanic. Nevertheless, Behrend argues, in the course of the process of evangelization, not only was the Acholi religion 'Christianized, but the Christian teaching was also Acholi-ized'¹¹² Today, because of the influence of Christian teachings, consultation with spirit mediums is a marginalized social practice which people tend not to speak openly about, but it continues to exist. As will be explored, particularly in Chapter 8, people have complex spiritual beliefs, and can be committed Christians while still seeing the value of traditional consultation with the spirit world.¹¹³ The spiritual domain, as is discussed in more detail

¹⁰⁷ Okot p'Bitek, 'Religion'; Behrend, 'Alice', p.172-3

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*

¹¹⁰ Allen p.385.

¹¹¹ Behrend, 'Alice', p.175; In 1957, a Witchcraft Act was introduced in 1957 and it remains in place today. To threaten a person with death by witchcraft was the most serious offence in the Act, punishable by life imprisonment. See Morris and Read, 'Development', p.205.

¹¹² Allen, 'Understanding', p.384; Behrend, 'Alice', p.116

¹¹³ Thomas Harlacher, *Traditional ways of coping with consequences of traumatic stress in Acholiland*, PhD Thesis, University of Fribourg (2009), p.40-41.

below, has also been an active site of ‘alternative’ and ‘counter-hegemonic’ ideologies, particularly with the rise of the Holy Spirit Movement (HSM) and the Lord’s Resistance Army (LRA) in the late 1980s.¹¹⁴

Implications

What this chapter has argued so far is that there exist many ‘traditions’ of Acholi justice and many forms of public authority, but ‘the law’ is highly contested terrain. State-sanctioned formal law never achieved widespread normative grounding *or* institutional ubiquity in Acholiland. In part this is because of the post-colonial decision to re-produce the colonial state-customary divide in law; in part it is because the state has never functioned effectively in Acholiland (as will be explored below). This is not to say that an *ideal* set of local justice alternatives exist on the margins, but simply that there *are* local forms of justice which people use and are often considered effective. The legal philosopher Herbert Hart wrote that in modern societies law is only known *as* law when most citizens conform to it *and* when legal officials consider it valid.¹¹⁵ In Acholiland neither pertains: there is a scarcely functioning judicial system: it is slow, expensive, inefficient and non-penal judgments are hard to enforce.¹¹⁶ People are often suspicious of the officials involved – particularly police and magistrates – who regularly request bribes or additional payments to carry out duties or act in a particular way.¹¹⁷ Family networks and local authorities, such as clan elders and village councilors, remain central to the dispensation and provision of justice.¹¹⁸ These authorities generate and disseminate a non-juridical form of knowledge and are guided by a set of material and spiritual interests that formal state law does not speak to.¹¹⁹ Crucially though it must be noted that the resilience of customary forms of authority and justice in Acholiland is a political and socio-economic reality based on historical experience and dominant constellations of power and authority rather than a result of static cultural predilections.

In general, as we shall see, external attempts to regulate, locally, the dispensation of law, order and justice are viewed with some suspicion and transitional justice, in essence,

¹¹⁴ Branch, ‘Ethnojustice’, p.626.

¹¹⁵ Hart; Gauri et. al, ‘Intersubjective’, p.166

¹¹⁶ For a good overview of access to formal justice in northern Uganda, see, Vahida Nainar, *In the Multiple Systems of Justice in Uganda*, FIDA-UGANDA, (2011)

¹¹⁷ Ibid; see also Porter, ‘After’. The issue of bribes and additional payment for police services came up repeatedly during focus group discussions in Acholiland.

¹¹⁸ Sally Berry, *No Condition is Permanent: the social dynamics of agrarian change in sub-Saharan Africa* (Madison: University of Wisconsin Press, 1993).

¹¹⁹ Ibid.

represents such an effort. This is as true for ‘traditional justice/restorative justice’ advocacy as it is for ‘formal accountability/retributive justice’ advocacy. Take the former for example: what Humphrey’s terms the ‘institutive moment’ in which colonial authorities imposed or co-opted local authorities, dis-regarded their actual content and ‘jumbled’ together formal and informal processes in the service of ‘gradual evolution towards “Western” institutional norms’ remains an accurate depiction of donor support for traditional justice practices, and the Ker Kwaro Acholi, in northern Uganda, examined in detail in Chapter 7. This has been combined with the latter. The government’s post-conflict strategy for the north, which is being implemented by the Justice Law and Order Sector (JLOS) and supported by donors, is to promote formal justice structures and to consolidate ‘state authority’ into the sub-region. This involves building more magistrates courts, more police stations, and more prisons, and all the while ‘sensitising’ the populations to what these institutions are and how they should be used.¹²⁰ This logic is central to donor support for transitional justice, the idea being that if judicial capacities are increased and people are ‘trained’ and ‘educated’ in what proper legal systems really look like, then the rule of law will be strengthened. But individuals and communities are not just ‘users’ who make decisions separable from their social contexts.¹²¹ Pre-existing and reified institutions concerned with the rule of law, such as the police and the courts, acquire meaning through history, and through the shared meaning systems that generate contest and re-define them.¹²² In other words, transitional justice processes should not be viewed simply as a ‘problem of norm construction’ but as one ‘inscribed into the context of political struggle’.¹²³ It is to the history of post-colonial political struggle, of inclusion and exclusion from the state; and of armed conflict, that we now turn.

Conflict and disorder

Acholi inclusion and exclusion

Today, despite a strong ethnic-linguistic identity, there is also a clear sense among the Acholi that they are Ugandans, albeit marginalized Ugandans. In the rest of Uganda, and particularly in the Bantu-speaking south, Acholiland and its people are commonly

¹²⁰ See, Strategic Objective 1 (SO1) of the GoU, Peace, Recovery and Development Plan (PRDP) for northern Uganda.

¹²¹ Gauri et. al, ‘Intersubjective’, p.166.

¹²² *ibid.*

¹²³ Franzski and Olarte, ‘Political’, p.201

regarded as a perplexing aberrant, a foreign people in a forbidding and frightening part of their own country. It is not uncommon for southerners never to have travelled to the northern region of the country. Those who do so are often warned by their friends and family to approach their journey with great trepidation and care. Of course, the South, and particularly Kampala, has a large Acholi population, but they remain, as David Kaiza remarks, 'a walking question mark to their fellow countrymen'.¹²⁴ How did this come to be? The Acholi relationship with the colonial and post-colonial Ugandan state has been deeply complex and tumultuous. The way in which this historical experience has shaped both internal and external notions of Acholi identity are crucial to the understanding of contemporary relationships with the NRM government and state authority.

Given the exhaustive strategies of oppression perpetrated by the colonial government against the Acholi, it is ironic that a pervasive and resilient colonial stereotype held that the Acholi, as a group, were inherently militaristic and violent.¹²⁵ These 'characteristics', colonial administrators argued, made the Acholi perfectly suited to fight for the British in their wars.¹²⁶ In 1947, J.P Postlethwaite wrote proudly that the Acholi are 'nowadays the tribe from which a large portion of both the King's African Rifles and the police are drawn'.¹²⁷ This points to the colonial pattern of regional and ethnic recruitment into the military. At independence in 1962, northerners, and particularly Acholis, were over-represented in both the military and the police. This was in part due to fictive colonial stereotyping and in part a result of colonial economic policy which, until at least the 1930s, discouraged cash cropping in the region, preferring instead to transfer Acholi labour to the large farms in the South.¹²⁸ This created an economic asymmetry that left few options outside of the military for those poorly educated Acholi who did not wish to farm.

Many socio-economic histories of colonialism in northern Uganda stop there.¹²⁹ It is true that Acholiland itself was perennially under-developed and under-represented in national

¹²⁴ David Kaiza, 'From the Land of Anaka', *Kvuni*, 5 (2008), pp.72-124, p.101

¹²⁵ Finnström, 'Surroundings', p.64.

¹²⁶ Postlethwaite, 'Look', p.70-1.

¹²⁷ *ibid.*

¹²⁸ Gertzel, 'Party', p.10-11; Kagumire, 'Political', p.140.

¹²⁹ See for example, Ruddy Doom and Koen Vlassenroot, 'Kony's Message: A New *Koine*? The Lord's Resistance Army in Northern Uganda', *African Affairs* 98: 390 (1999), p.5-36.

politics.¹³⁰ However, at independence the Acholi enjoyed the highest levels of employment throughout Uganda, and were the next best represented group in the civil service after the Baganda.¹³¹ Educated Acholi took professional jobs in the civil service, either at district or provincial level; became teachers; or migrated to the South to be employed, largely, by the government. To give some sense of the reliance of the Acholi on government employment on the eve of independence, there were 7,074 Africans employed in the public services in Acholiland, compared with 445 traders.¹³² Indeed, the striking thing about Acholiland and its inhabitants is not just the degree of exclusion since colonial times, but the extent and nature of *inclusion* into the modern Ugandan state from the late colonial period until Idi Amin began his violent rule in 1971.¹³³

In his political history of the Acholi, Adam Branch argues that by the 1950s a ‘dominant internal political order’ had taken shape in Acholiland. This comprised a ‘community of interests’, perhaps the most prominent of which was the ‘petty bourgeoisie’, those large numbers of Acholi employed directly by the state or dependent on it in some form.¹³⁴ While there was no great post-war anticolonial sentiment in Acholiland, it was present in other British African territories and colonial authorities attempted to contain local grievances with the introduction of nominally representative consultative local councils.¹³⁵ In 1943, councils were set up at district, divisional and county levels, which brought together appointed chiefs and the ‘emerging petty bourgeoisie’ as well as another disgruntled group – those lineage heads and elders who had heretofore been marginalized by the British.¹³⁶ When the political parties – the Uganda National

¹³⁰ According to Gertzel, ‘Party’, p.10-11, ‘The rate of education development in the north had distinctly lagged behind southern parts of Uganda, in 1952, of a total of 1912 pupils in secondary school, only 151 were from the Northern Province’. The Northern Province was also denied the representation enjoyed by Buganda, Western and Eastern Provinces at the Legislative Council in the 1950s. See Kagumire, ‘Political’, p.141.

¹³¹ Adam Branch, *Displacing Human Rights, War and Intervention in Northern Uganda* (New York: Oxford University Press, 2011), p. 49

¹³² Colin Leys, *Politicians and policies: An essay on politics in Acholi, Uganda, 1962-65* (Nairobi: East African Publishing House, 1967), p.15; According to Gertzel, before 1950, 21 Acholi had gone through Makerere, compared with 7 from Lango and 3 from West Nile, see, ‘Party’, p.13.

¹³³ Branch makes this point in his chapter, ‘The Politics of Violence in Acholiland’, in ‘Displacing’, pp.45-90.

¹³⁴ Ibid;

¹³⁵ Ibid; Kagumire writes that ‘after the second world war, the British government realized that she had to develop her colonial dependencies at a faster rate than hitherto and, in particular, to democratize the organs of local government and give them wider responsibilities. This new policy was conveyed to the colonial governors in the Colonial Secretary’s dispatch of 25th February 1947, see Kagumire, ‘Political’, p.127.

¹³⁶ Branch, ‘Displacing’, p.49. These were formalized in the 1949 Local Government Ordinance and the 1955 District Administration Ordinance.

Congress (UNC), formed in 1952, and the Democratic Party (DP), formed in 1956 - began working in Acholiland in the early and mid-1950s, the councils became the lynchpin in a dynamic and mutable relationship between the centre and the periphery: a relationship which also came to define and politicize claims of Acholi ethnicity.¹³⁷

Indeed ethnicity had become a powerful clarion call in 1950s colonial Uganda. It was the banner under which the Baganda in the southern part of the country had managed to extract important political and economic concessions from the Protectorate administration.¹³⁸ As the Acholi District Council became more active it became aware that political concessions and political clout on the national stage could only be secured through the articulation of a common Acholi identity. Thus against the backdrop of serious internal Acholi divisions, which found expression in tensions between lineage based authorities and government chiefs; between UPC and DP supporters; between Protestants and Catholics; and between the more westerly part of the sub-region and the less developed east, an 'administrative ethnic categorization' was pragmatically embraced.¹³⁹ Debates about a 'head of the Acholi' began as early as the mid-1940s, and by the early 1950s there was an overarching consensus in the District Council that the Acholi needed a figure of equivalent standing to the Kabaka of Buganda, or the Western kings, in order to assert itself on the national stage.¹⁴⁰ The machinations behind the filling of this position, which was not achieved until 1963, became a 'significant element' in Acholi party politics, illustrating the 'interplay of social and traditional ties within party and area loyalties' but also the symbiotic relationship between an emerging 'Acholi' identity and modern state building in Uganda.¹⁴¹

In 1962 Milton Obote, a Langi from northern Uganda, became Uganda's first Prime Minister. Under Obote it was the northerners rather than the southerners who were seen to be receiving political privileges and benefits from the state. The Acholi and Langi in particular, provided the social base that Obote needed to sustain his rule. The nationalization of some foreign industries and the creation of parastatals increased the opportunities for patronage, and resulted in an economic bureaucracy staffed overwhelmingly by the Acholi and Langi, with the Acholi political class 'profiting

¹³⁷ Branch, 'Displacing', p.46.

¹³⁸ Gertzel, 'Party', pp.2-6.

¹³⁹ For a discussion of intra-Acholi tensions in this period, see Gertzel, 'Party' and Leys, 'Politicians'.

¹⁴⁰ Gertzel 'Party', pp.56-76.

¹⁴¹ Leys, 'Politicians', p.21.

considerably'.¹⁴² This, combined with the fact that the Acholi and Langi were, again, disproportionately recruited into the military, led to accusations within the marginalised political classes of 'Nilotic nationalism' and 'ethnic chauvinism'.¹⁴³

After the suspension of the constitution in 1966, the army became the key guarantor for regime survival. By the time he was deposed, Obote's army had grown from 700 troops at independence to 9000, of which over one third were Acholi.¹⁴⁴ Idi Amin, a Lugbara from West Nile (another region in northern Uganda), and army chief under Obote, launched his successful coup in 1971, turning Uganda from a one party state into a military dictatorship.¹⁴⁵ Amin synonymised the rule of Obote with Langi and Acholi dominance, and in July 1971 thousands Acholi and Langi soldiers were massacred at Mbarara, Moroto and Jinja barracks. The following year Amin launched another 'mopping up' operation against Luo-speaking¹⁴⁶ army personnel, once again killing thousands.¹⁴⁷ In addition to purging the military, Amin and his forces targeted Acholi politicians, civil servants and other prominent officials, both in central government and in the districts.¹⁴⁸ Those prominent and influential Acholi who were not killed decided to flee, creating an extensive Acholi diaspora which would expand over the years and still exists today. The structural dependency of the Acholi elite and middle class on the state, meanwhile, was to be their undoing, and it was a very rapid undoing. Prospects for rehabilitation were depressingly bleak, with 'no independent economic foundation on which to build a new mediating class between the peasantry and the government'.¹⁴⁹

When Amin was eventually overthrown in April 1979 by the Tanzanian army and the Ugandan Liberation Army (UNLA) led by Milton Obote, Uganda was 'economically dilapidated'.¹⁵⁰ Obote was back, and he claimed victory in the multiparty presidential elections in 1980. Certain prominent Acholi were incorporated into the new Obote II

¹⁴² Branch, 'Displacing', p.55.

¹⁴³ Finnström, 'Surroundings', p.66.

¹⁴⁴ Branch, 'Displacing', p.56; Although, as Finnstomm points out Obote's government was made up of people 'from every corner of Uganda' and his Cabinet was particularly diverse: 'ministers came from all over the country', in 'Surroundings', p.65.

¹⁴⁵ David Mukholi, *A Complete Guide to Uganda's Fourth Constitution* (Kampala, Fountain, 1995), p.19-18

¹⁴⁶ 'Luo' is a broad ethno-linguistic categorisation and it applies to those who speak Nilotic languages in northern Uganda.

¹⁴⁷ Adam Seftel (ed.), *Uganda, The Bloodstained Pearl of Africa and its struggle for Peace: From the pages of Drum* (Kampala: Fountain, 1994), p.85.
p. 125.

¹⁴⁸ Branch, 'Displacing', p.57.

¹⁴⁹ *ibid.*

¹⁵⁰ Seftel, 'Uganda', p.105.

government, but there was no money to revive the massive patronage machinery that had been the lifeblood of the Acholi middle class and political elite under Obote I. The principal route back into state employment was through the military, and the Langi and Acholi were once again over-represented in the UNLA officer corps.¹⁵¹ During 1981 Yoweri Museveni, a former ally of Obote, established the National Resistance Army (NRA), and began a bush war in protest against what he and his followers regarded as a fraudulent Presidential election. The guerilla fighting was concentrated in central Uganda, in a region called the 'Luwero Triangle,' just north of Kampala. In January 1983 Obote launched Operation Bonanza, a murderous military expedition, which caused more than 300,000 deaths.¹⁵² Blame for the profound suffering that resulted was placed squarely on the UNLA, and in particular on its northern personnel, so that even today, 'Luwero is the ghost that haunts the Acholi'.¹⁵³

Under Obote II, the fragile alliance between the Acholi and the Langi proved short-lived. The Acholi accused Obote of placing them on the front line while the Langi enjoyed the relative security of the officer ranks. This festering resentment led, in July 1985, to a successful coup by Acholi troops, led by Acholi UNLA commanders Tito Okello and Bazilio Okello. But the quick rise to power of the first Acholi president was never really cemented, and after some peace talks, or what became known as 'peace jokes,' with the NRA, Museveni quickly captured Kampala.¹⁵⁴ As soon as the NRA declared victory in January 1986, the Acholi dominated UNLA beat a hasty retreat north. Since independence, each successive regime: Obote I, Amin, Obote II, and the brief rule of the Okello's, had been characterized to some degree by tensions within the north. But these intra-northern battles were now whitewashed in the service of a more powerful narrative, born in the south, which celebrated the coming to power of the NRA, and the end of twenty-five years of 'northern' dominance and rule.

A function of the NRA rebellion and subsequent victory was to coagulate the north-south regional divide for very clear political ends. Museveni and his cadre were predominantly Banyankole from Ankole in southwestern Uganda. The NRA needed to build a popular support base and one of the key ways by which it did so was by appealing

¹⁵¹ Branch, 'Displacing', p.58.

¹⁵² Doom and Vlassenroot, 'Kony's', p. 9.

¹⁵³ *ibid.*

¹⁵⁴ Juma Okuku, *Ethnicity, State Power and Democratisation Process in Uganda* (Uppsala: Nordiska Afrikainstitutet, 2002).

to a broader southern regional identity. At the time, the Obote II government was trying to portray the NRA as an ‘alien’ movement, comprising Rwandan elements intent on destroying Uganda.¹⁵⁵ The NRA responded with a similar tactic, differentiating between ‘bantu-southerners’ and dangerous and incompetent ‘Nilotic northerners’.¹⁵⁶ Acholi commentators have since railed against what they regard as an erroneously imposed collective guilt for the violence of the Obote II government.¹⁵⁷ But Finnström correctly argued that the Acholi have found it ‘impossible to escape the past as expressed in the national memory’.¹⁵⁸ When the NRM took Kampala in January 1986, what followed was the categorical marginalization of the Acholi in every aspect of Ugandan political, social and military life. As Omara Otunnu describes,

‘the cabinet was made up of less than 6 per cent Luo speakers, and their appointment to other government positions was similarly disproportionately low. The NRA was composed of...over 90 per cent Bantu speakers, and the police force saw over three quarters of its members summarily dismissed’.¹⁵⁹

Acholiland was also subject to an unparalleled degree of state harassment and violence. A short passage in Finnström’s work is instructive. His key informant, Tonny, recounts the NRM’s intervention, both physical and psychological, into Acholiland. His point is that it was unprecedented.¹⁶⁰ Finnström concludes that,

‘Amin’s forces, which were responsible for the killing of thousands of Acholi individuals, targeted mainly politicians, soldiers and intellectuals. Unlike Museveni’s army, claimed my informants when they compared their situation to that of the 1970s. Amin’s soldiers never bothered to go deep into the rural areas to harass, loot and kill ordinary people’.¹⁶¹

When the NRA aggressively pursued fleeing UNLA troops in 1986 and 1987, Acholiland was unstable and insecure. This was a situation characterized by generational, spiritual, and identity-based insecurity, and a total lack of effective political leadership. It was

¹⁵⁵ Branch, ‘Displacing’, p.60.

¹⁵⁶ Finnström, ‘Surroundings’, p.74-5; Branch, ‘Displacing’, p.60-61, Branch also correctly notes that supposed existence of an anti-northern agenda among the NRA has been ‘hotly contested by its supporters’; A.G. Ginyera-Pinywa *Northern Uganda in national politics* (Kampala: Fountain Publishers, 1992); Louise Pirouet, ‘Human Rights Issues in Museveni’s Uganda’, in Holger Bert Hansen and Michael Twaddle (eds.), *Changing Uganda* (London: James Currey, 1991), pp.197-210, p.200.

¹⁵⁷ Amii Omara-Otunnu, *Politics and the military in Uganda, 1950-1985* (London: Macmillan, 1987); Heike Behrend notes that through Obote II, ‘the idea became stronger that Obote had tried to get rid of the Acholi soldiers by sacrificing them in the war against Museveni’, see Heike Behrend, ‘Is Alice Lakwena a witch? The Holy Spirit Movement and its fight against evil in the north’, in Hansen and Twaddle, ‘Changing’, pp.162-178, p.165.

¹⁵⁸ Finnström, ‘Surroundings’, p.74; p.82.

¹⁵⁹ Otunnu, ‘Politics’, p.177.

¹⁶⁰ Finnström, ‘Surroundings’, p.73

¹⁶¹ Finnström, ‘Surroundings’, p.73; Similar perspectives were relayed during fieldwork in Acholiland in 2012 and 2013.

certainly not the ‘ethnic political solidarity’ that the NRM envisaged, and yet, as Branch argued, the severity of the NRA attack on the north gave rise to the very rebellion they feared.¹⁶² By March 1986 an unlikely coalition of interests, including former Acholi politicians, sections of the defeated UNLA, Obote supporters, and even Amin supporters, had formed the Uganda People’s Defence Army (UPDA) in Juba, southern Sudan, with the aim of regaining national power through armed resistance to the NRM/A.¹⁶³ When the undisciplined and poorly trained NRA 35th Battalion arrived in Gulu in August 1986, the counter-insurgency was so violent that by the end of the year the international media were covering the story, and accusations of genocidal behavior were being leveled at the NRM.¹⁶⁴ President Museveni’s excuse was to blame reports of abuse on deviant soldiers: this was, he argued, an aberration and not the norm.¹⁶⁵

The coming of the LRA

In 1988 the government offered an amnesty to the UPDA and a peace agreement was signed. Many of those who refused to sign had already defected to a novel and seemingly preternatural form of armed resistance. It was experimental, and utterly confusing to the outside world. In essence, though, Alice Lakwena’s Holy Spirit Mobile Force represented a way of making sense of a violent recent history, and a means of establishing a form of legitimate authority across the region. Alice claimed she was possessed by the spirit of an Italian who died during First World War.¹⁶⁶ *Lakwena*, Alice said, told her to launch the Holy Spirit Movement and ‘to save the male youth’ of Acholi from the ‘malicious plan’ of Museveni to kill them all in revenge for ‘what happened many years back’.¹⁶⁷ *Lakwena*’s mode of spiritual leadership and her rhetoric of cleansing and purging of wrongdoing, witchcraft, and sorcery had an appeal beyond Acholiland, and the HSM recruited successfully in both Lango and Teso. It is estimated that Lakwena’s army eventually numbered somewhere between 7000-10,000 troops.¹⁶⁸ It was

¹⁶² Branch, ‘Exploring’, pp.33-4

¹⁶³ Doom and Vlassenroot, ‘Kony’s’, p. 14; Branch, ‘Displacing’, p. 34; Robert Gersony, *The anguish of northern Uganda: Results of a field-based assessment of the civil conflict in northern Uganda*, Report written for USAID (1997).

¹⁶⁴ Pirouet, ‘Human’; Gersony, ‘Anguish’, p.12; Branch, ‘Exploring’, p.35. The 35th Battalion included remnants of the UNLA that had surrendered and ex-FEDEM troops (FEDEMO was a smaller NRA militia, composed mainly of Bugandans and originally formed to resist Obote II).

¹⁶⁵ Doom and Vlassenroot, ‘Kony’s’, p. 14

¹⁶⁶ Allen, ‘Understanding’, p.376; Lakwena means ‘messenger’ and ‘has become the most common Acholi name given to a rebel in the most general sense’, see Finnström, ‘Surroundings’, p.76.

¹⁶⁷ Behrend, ‘Witch’, p.165

¹⁶⁸ Allen, ‘Understanding’, p.377

not until she reached the outskirts Jinja, just to the northeast of Kampala, in November 1987, that the HSM was finally defeated and crushed by the NRA.

It is often said that Joseph Kony is a distant cousin of Alice Lakwena. He was born in 1961, in Odek, to the east of what is today Gulu district. He was a Catholic altar boy, and people who knew him as a child recall him performing songs and dances at local church services.¹⁶⁹ Kony had cut his teeth fighting NRA soldiers with the UPDA's black battalion in Atanga, and by 1987 he was the local force commander.¹⁷⁰ There are conflicting accounts of how the LRA came into being, in that same year. In the early 1990s, the Resident District Commissioner (RDC) of Gulu said that Kony 'failed to be accepted by his village as a prophetic leader and started a private gang', which went on to commit minor crimes and disturbances.¹⁷¹ In his own words, Kony claims that he 'came to the assistance of his people who had been deserted by elders, families and leaders'.¹⁷² Kony started his movement as the Holy Spirit Movement II, renaming it the Lord's Salvation Army, the United Democratic Christian Force, and later the Lord's Resistance Army. To this day it remains unclear whether he received the blessing of any of the lineage-based authorities.¹⁷³ While some former UPDA and HSM fighters joined Kony readily, there was a general lack of popular support in the form of volunteers and material help.

From the outset, a key factor in Kony's thinking seemed to be the categorization of Acholi people into two broad camps: the genuine and the corrupt.¹⁷⁴ The self-flagellation of the Acholi had its antecedent in Alice Lakwena's assertions about the wickedness of the Acholi people, and their need to be cleansed.¹⁷⁵ But Kony's internal enemy was understood more specifically to be the Acholi who were collaborating with the NRM state apparatus. The construction of such an enemy was a sign of the times. The period during which Kony emerged onto the scene was also the period when the NRM began consolidating state power in Acholiland, setting up local government structures

¹⁶⁹ Tim Allen, 'Understanding Alice: Uganda's Holy Spirit Movement in Context', *Africa* 61:3 (1991), pp.370-399, p.372; Finnström says that for some time, Lukoya was directly under Kony's command, 'Surroundings', p.77.

¹⁷⁰ Allen, 'Understanding', p.372

¹⁷¹ Ruddy Doom and Koen Vlassenroot, 'Kony's Message: A New Koine? The Lord's Resistance Army in Northern Uganda', *African Affairs* 98:390, pp.5-36, p.21

¹⁷² Finnström, 'Surroundings', p. 76

¹⁷³ Doom and Vlassenroot, 'Kony's', p. 21; Branch, 'Exploring', p.38.

¹⁷⁴ Branch, 'Exploring', p.39-40.

¹⁷⁵ Allen, 'Understanding', p.393; Behrend, 'Alice', p.197.

and LDUs. These were staffed by ex-UNLA, ex-UPDA, and other Acholi civilians, all of whom came to be perceived by Kony and his leadership as co-opted agents of an 'ethnically exclusive central state'.¹⁷⁶ In his self-appointed role as the arbitrator and custodian of a true and genuine Acholi identity, Kony also subverted traditional authority and customs, rejecting the role played by traditional leadership and elders in regulating Acholi life, and ordering the murder of clan leaders, *ajwaka*, and the burning of ancestor shrines.¹⁷⁷

The spiritual order of the LRA and the horrendous acts they have committed has been a source of morbid fascination for the international media over the years. Kony is held up as the archetypal African warlord: brutal, irrational, bizarrely religious, child snatching, and insane.¹⁷⁸ But while the media is still fixated on this stereotype, scholarship has moved on. There is a growing body of work which analyses the strategic functions of spirituality and violence in the movement.¹⁷⁹ Part of the enduring force of the LRA was the way in which Acholi cosmologies were employed as what Kristof Titeca has called 'fine-tuned instruments of torture'.¹⁸⁰ For civilians and many NRA/UPDF fighters caught up in the violence, even to this day, there is a widespread feeling that Joseph Kony, regardless of whether or not he has a legitimate authority, has supernatural powers. This belief derives from a deep familiarity with the traditional and religious idioms that Kony has drawn upon and subverted over the years.¹⁸¹

The overarching national and international narrative about the LRA has been that it lacks any political agenda. In 1997 the Ugandan Parliamentary Committee on Defence and Internal Affairs reported that it had 'failed to establish the cause or causes for which the LRA is fighting'.¹⁸² A report from the United Nations in 2001 concluded that the 'LRA has no coherent political or other objectives'.¹⁸³ But Sverker Finnström questioned these assertions in his analysis of LRA 'manifestoes' gathered over a ten-year period (1997-2007). Whilst acknowledging the disputed provenance of these documents, he identified

¹⁷⁶ Branch, 'Exploring', p.40

¹⁷⁷ Allen, 'Understanding', p.379.

¹⁷⁸ The most well-known advocacy group promoting this image of the LRA is the US-based Invisible Children.

¹⁷⁹ See for example, contributions by Kristof Titeca, Sverker Finnström, Mareike Schomerus and Ben Mergelsberg in Allen and Vlassenroot, 'Myth'.

¹⁸⁰ Kristof Titeca, 'The Spiritual Order of the LRA', in Allen and Vlassenroot, 'Myth', pp.59-74, p.70.

¹⁸¹ *ibid*, p.69-70

¹⁸² Quoted in Doom and Vlassenroot, 'Kony's', p.14.

¹⁸³ Quoted in Finnström, 'African', p.81.

clear secular priorities, including the restoration of multi-party politics via free and fair elections; the introduction of constitutional federalism; and the need to develop nationwide socio-economic balance.¹⁸⁴ These demands are accurate reflections of the range of concerns that people express in Acholiland up to the present day. These include the relative under-development of the north in comparison with the rest of the country; poor access to decent education and healthcare; the excessive power and poor accountability of the central government and the military; and a general sense of rejection and inadequacy which makes the people feel that northern Uganda exists only as a peripheral and problematic space.

The difficulty, then, was not with the political agenda of the purported LRA/M manifestos; it was with the LRA's strategies of violence, which remained bewildering to most Acholi. The LRA conception of the internal enemy, linked as it was to those who collaborated with the government, made little sense to civilians, and had little grounding in political realities. Many Acholi, for example, while being skeptical of the government's control over the local council system, also understood that it represented a negotiating platform from which they might advance their own interests.¹⁸⁵ Even more perplexing was the common LRA assertion that Acholi civilians were in willful acquiescence with the very government directives that were destroying their lives. When the Acholi were forcibly displaced into camps, the LRA actually increased their violence against displaced civilians, attacking camps, burning huts, and insisting the occupants were supporting government policies. In a telephone interview broadcast on the local FM radio in Gulu in 2003, Vincent Otti, Kony's deputy, echoing similar pronouncements made throughout the war, threatened more violence in the camps, which he argued were 'inhabited by "government agents"'.¹⁸⁶

The lived experience of the Acholi in the years since 1986 contrasted fundamentally with the overarching historical narrative of peace and rising prosperity in Uganda since Yoweri Museveni took power. The policy of crowding people into IDP camps, which began systematically in 1996, had, by 2005, displaced more than 90% of the Acholi population. The government made it clear that anyone found outside a camp would be treated as an insurgent and killed. The IDP camps were ostensibly 'protected' by small

¹⁸⁴ Ibid, p.85-6. According to Behrend, the HSM also had a secular agenda, see, Behrend, 'Witch', p.171.

¹⁸⁵ See Branch, 'Roots', p.38-44.

¹⁸⁶ Finnström, 'Surroundings', p.136

groups of UPDF soldiers and local defence units under their command. In reality, attacks on camps were common, and abuses by both the UPDF and LRA were a regular feature of camp life for many.¹⁸⁷ The camps totally devastated Acholi livelihoods, and inflicted the most unimaginably brutal living conditions, leading to a far larger number of deaths than those caused by LRA violence.¹⁸⁸ An unsettling thing about the camps is the extent to which they were actually a product of the dysfunctional relationship between military oppression and humanitarian assistance that has been so well documented in many post-Cold War contexts.¹⁸⁹ In northern Uganda this new form of public authority, humanitarian relief, was ‘entangled in the structuring of the camps’: it fed, clothed and sustained these ‘rural prisons’.¹⁹⁰ State violence and humanitarianism became mutually re-enforcing, initiating and perpetuating a form of ‘political mass persecution’ which Chris Dolan has called ‘social torture’.¹⁹¹

Accounts of camp life describe a situation in which any ability to exercise the rights of citizenship or to seek accountability or redress for a wretched daily existence was nonexistent.¹⁹² Dolan described how the camps were administered by ‘multiple and overlapping authority systems’.¹⁹³ People brought their own authority figures with them into the camps, most notably village elders and *Rwodi Kweri*, but they also came under the authority of the local sub-county council (LC3) under whose jurisdiction the camp lay, as well as ‘camp leaders’, who were civilians elected to administer the camps.¹⁹⁴ The military, meanwhile, had an expansive mandate that ranged from demands that people move closer together to ensure their protection, to ‘warnings that people consider hygiene and sanitation to avoid the outbreak of disease’.¹⁹⁵ There was a staggering lack of police services. According to a Human Rights Watch report in 2005, many camps containing tens of thousands of people ‘have not a single police officer to monitor, investigate or prosecute crime’, including alleged abuses by the UPDF.¹⁹⁶ The judicial

¹⁸⁷ Branch, ‘Displacing’, p.92; Human Rights Watch, *Uprooted and Forgotten: Impunity and human rights abuses in northern Uganda* (New York, 2005).

¹⁸⁸ Allen and Vlassenroot, ‘Introduction’, p.15; Branch, ‘Displacing’, p.93; Sverker Finnström, ‘Surroundings’, p.134

¹⁸⁹ See for example, David Rieff, ‘Bed’.

¹⁹⁰ Allen and Vlassenroot p. 14; Sverker Finnström p.134

¹⁹¹ Finnström, ‘Surroundings’, p.135; Chris Dolan, ‘Social’.

¹⁹² Despite this, Finnström gives examples of how people living in the camps defied the system and their identity within it, see Finnström, ‘Surroundings’, p.151-165

¹⁹³ Dolan, ‘Social’, p.112

¹⁹⁴ Dolan, ‘Social’, p.113.

¹⁹⁵ Dolan, ‘Social’, p.114.

¹⁹⁶ Human Rights Watch, ‘Uprooted’, p.48.

system was virtually non-existent in northern Uganda during the conflict, and by the time the ICC arrest warrants were announced, the High Court in Gulu had not sat for five months, and the case backlog was ‘two to three years’.¹⁹⁷

Narratives of social breakdown and Repair

In Acholiland today, people talk about how ‘camp’ life undermined Acholi traditions, cultural practices, and social institutions.¹⁹⁸ In the late 1990s and 2000s conferences were held, and NGO reports were produced which articulated something akin to a theory of social breakdown. It was said that a long history of war had destroyed the natural biotope of the Acholi social and moral order.¹⁹⁹ Its ability to regulate conflict was thus severely compromised and could only be restored through the promotion of Acholi ‘unity’ and the strengthening of ‘cultural heritage’.²⁰⁰ This agenda was given additional impetus after the ICC investigation was announced in 2004. The Refugee Law Project argued that the ICC and ‘Nuremberg-style trials’ were ‘not at all suited’ to northern Uganda and the type of conflict that had taken place. They called instead for a resolution of conflict which ‘centres around the Acholi’.²⁰¹ Shortly afterwards, the Canada-based Liu Institute for Global issues produced a report called *Roco Wat I Acoli: Restoring Relations in Acholi-land*, expressing concern that the ICC might ‘damage cultural identity and beliefs’.²⁰² The report went on to document ‘traditional’ processes that might play an alternative role in efforts towards transitional justice.²⁰³ The *Mato Oput* compensation and reconciliation ritual attracted the most attention, and the term would later become synonymous with ‘traditional’ approaches to transitional justice in Acholiland.

Adam Branch suggests that such arguments, when promoted and co-opted by donor agencies and internationally funded NGOs comprise a harmful and pernicious ‘ethno-

¹⁹⁷ *ibid*, p.50.

¹⁹⁸ Finnström, ‘Surroundings’, p.146-7.

¹⁹⁹ See for example Dennis Pain, *The Bending of Spears: producing consensus for peace and development in northern Uganda* (London: International Alert, 1997); Erin Baines, *Roco Wat I Acholi: Restoring relationships in Acholiland* (Justice and Reconciliation Project, 2005).

²⁰⁰ Mark Bradbury, *An Overview of Initiatives for Peace in Acholi, Northern Uganda* (CDA, 1999), p.18.

²⁰¹ Lucy Hovil and Joanna Quinn, ‘Peace First, Justice Later: Traditional Justice in Northern Uganda’, *Refugee Law Project Working Paper No.17* (July 2005), p.51.

²⁰² Baines, ‘Roco’, p.ii

²⁰³ Baines, ‘Roco’, p.ii

justice' agenda. Drawing upon the work of the Beninese philosopher, Paulin Hountondji, he posits that the ethnojustice narrative describes,

‘a single, coherent, positive system that is presented as being universally, consensually, and spontaneously adhered to by all members of that culture and that, even if in abeyance today, remains valid and should be revived’.²⁰⁴

In its most concerning iterations, the ethnojustice approach actually attracts donor funding for training Acholi's how to be Acholi.²⁰⁵ In 1995 the Uganda Constitution reinstated the right of Ugandan citizens to adhere to the culture and cultural institutions of the community – a privilege that had been abolished by Milton Obote in the 1960s.²⁰⁶ The articulation and codification of an ‘ethnojustice’ agenda has therefore developed synchronously with the newly created Acholi ‘cultural institution’, the Ker Kwaro Acholi, set up in 2000 and headed by an Acholi paramount chief, (*lawirrwodi*). The KKA claimed custodianship over an increasingly singular definition of Acholi tradition, and the language used by advocates was of ‘rejuvenation’ and ‘reinstallation’.²⁰⁷ But this newly formed authority structure was contested from the outset, perhaps not surprisingly given the Acholi's history with externally supported chiefly figures.²⁰⁸ The ethnojustice narrative misleadingly implied that the KKA and its anointed chiefs had the exclusive and ancient right to restore a set of ideal social relationships that were somehow inherent in Acholiland. This was buoyed up by calls from religious leaders who stressed the cultural proclivity of the Acholi towards forgiveness and reconciliation.²⁰⁹ The idealized notion that there is a distinct and uniform ‘Acholi’ way of dealing with the aftermath of the war has come to represent a powerful, transitional justice conception, one which is explored in depth in chapter seven.

Rather than simply dismissing ‘ethnojustice’ narratives as mendacious and pernicious, as both Allen and Branch are prone to do, this thesis is concerned, firstly with understanding more carefully how and why such approaches are constructed, and in

²⁰⁴ Branch, ‘Displacing’, p.162

²⁰⁵ Liu Institute, Roco Wat, p.22; Branch, ‘Ethnojustice’, p.620. Pain, ‘Bending’, p.85.

²⁰⁶ As Apolo Nsibambi explains though, it was made clear that traditional rulers ‘shall not take part in partisan politics, stand for election to a political office, overtly favour or campaign for a candidate running for political office’. Indeed Museveni's formal recognition of the traditional leaders and kingdoms was largely an effort to circumscribe their function and role, particularly in relation to the growing power of the Buganda kingdom. See, Apolo Nsibambi, ‘The Restoration of Traditional Rulers’, in Holger Hansen and Michael Twaddle (eds.) *From Chaos to Order: The Politics of Constitution Making in Uganda* (Kampala: Fountain Publishers, n.d) pp.41-61, p.47.

²⁰⁷ Liu Institute, ‘Roco Wat’, p.2.

²⁰⁸ This is explored in Chapter 7.

²⁰⁹ This is explored more in Chapter 7.

whose interests they serve. Secondly, it is concerned with exploring in more empirical depth, whether, locally, such narratives have their desired impact. One of the great dangers of relying too heavily on the seminal critiques of donor-supported ‘traditional’ agendas in northern Uganda, is that these have obscured a much broader realm of local practice, one that exists largely outside of the purview of donors, NGOs and traditional KKA chiefs. It is this latter realm of activity that provides us with a much more accurate picture of the nature of Acholi ideas and practices related to justice and reconciliation and this remains of the focus of the final two chapters of the thesis.

As a source of social unease it is important to remember that the degradation of prototypical Acholi tradition and practices has been a perennial concern, and was written about extensively by Frank Girling in the mid-century, by Okot p’Bitek in the 1970s and by Heidi Behrend in the 1980s. The depiction of Acholi tradition as ‘pristine and hermetically sealed, with no prior history of social negotiation or change’²¹⁰ is a rhetorical device and a political expression. The boundaries are constantly shifting, and there is always a ground zero, before which tradition was unadulterated. Today, that ground zero is ‘before the LRA war’; during the 1980s, it was ‘before Amin’; during the 1950s it was ‘before colonialism’.²¹¹ Then, as now, there were calls for Acholi society to be restored to its ‘true condition;’ and then, as now, there were large sections of society for whom this call resonated very little, particularly, for example, those who have access to economic opportunities, and the younger generation as Branch has argued, but also for the many rural communities which have their own authority structures in place and who do not identify with a ‘chief’.²¹² There is a particular function of the narrative which holds that ‘traditional Acholi’ forms must be restored, and while it sounds coercively prescriptive, it should also be understood as an expression of social disorientation and shifting power dynamics: all of which have been recurrent themes in modern Acholi history. While critics have been correct to highlight the problems with the ethnojustice agenda, it is equally important not to over-state its potential or actual impact. As Chapter 7 explores, the chiefly system set up with the help of donors to carry out traditional

²¹⁰ Roger Mac Ginty and Gurchathern Sanghera, ‘Hybridity in Peacebuilding and Development – an Introduction’, *Journal of Peacebuilding and Development*, 7:2 (2012), pp. 3-8, p.3.

²¹¹ Girling, ‘Acholi’, p.202-3; Heidi Behrend, ‘War in Northern Uganda: The Holy Spirit Movements of Alice Lakwena, Severino Lukoua and Joseph Kony’, in Christopher Clapham (ed.) *African Guerrillas* (Clarendon: Oxford University Press, 1998), pp.107-118.

²¹² See Branch, ‘Ethnojustice’, p.624.

reconciliation practices remains largely unimportant and marginal to local political life and local ideas about justice.

Concluding discussion: Complicating prospects for transitional justice

In a period of not much more than one hundred years, Acholiland has experienced colonialism, authoritarian statism, civil war, and, most recently, partial democratization and liberal peace building. Each form of intervention has shaped contexts, produced new interests, and inspired a range of reactions. Transitional justice, with its multiple conceptions, is no exception. The way that people respond to and re-shape notions of justice and accountability can only be understood against the backdrop of historical experience and the inter-subjective understandings and relational and symbolic dynamics that this history has produced. It is this which infuses otherwise rather abstract categories, such as ‘criminal justice,’ or ‘traditional reconciliation,’ or ‘customary authority,’ with meaning. This chapter identified various patterns that have emerged from a socio-legal and political history of Acholiland since pre-colonial times. These should better inform our understanding of transitional justice in northern Uganda, and the ways in which people have reacted to it, re-shaped it, or simply ignored it.

The first is an inherited legal dualism, which began as a programme of colonial social engineering and control. It entered the post-colonial period as a regrettable but convenient compromise, was institutionally incorporated as a beacon of decentralization policy, and has since – as will be explored more in Chapter 8 - been locally ‘embedded’ as preferred method of justice. This legal dualism as conceived at the policy level has been predicated on the logic of the master narratives outlined above. But crucially, since the colonial era, public authority systems, whether it be the clan elders or local council courts, have been defined and re-defined through social practice.²¹³ While the formal, informal and customary have undergone continuous processes of hybridisation, the reified distinction between the ‘formal’ and the ‘customary’ is still very much a political and socio-legal reality and it is not therefore surprising that as a notion it has been reproduced in discussions about transitional justice. At the same time, it is important to historicise this distinction and to understand it as a product of a particular historical experience rather than as somehow culturally determined.

²¹³ Gauri et. al, p.165.

This brings us to a second theme which is the tension between the local as lived and the local as imagined. In Acholiland today there exists an abiding form of social regulation which is not based on jurisprudence but on authoritative and familiar notions about what is ethically and spiritually appropriate in certain common situations. This can be as exclusionary and violent as it can be inclusive and benign. But as a form of social practice it exists outside of the purview of transitional justice discussions, which are based more on imagined notions of Acholi life. So, for example, donor transitional justice conceptions, emphasise judicial ‘capacity building’ and human rights ‘sensitisation’ as a way of enhancing ‘access to justice’. But such programmes do not take sufficient account of the deep-rooted, socially generated legitimacy of the systems that people already use. Similarly, the ‘traditional justice’ agenda is more of a political vision than a true reflection of Acholi experiences. It tells us something about how certain authority figures and constellations of interests would like Acholiland to be ordered, rather than how it actually is ordered, and it deliberately obscures the texture and heterogeneity of Acholi history and spirituality.

Finally, we can observe that despite the Acholi being well integrated into the state at certain periods during the post-colonial era, the state has never really functioned coherently or legitimately in Acholiland itself. By the time the NRM’s relentless assault on the Acholi began, the region was already beset by internal political weakness and deep spiritual insecurity. This weakness manifested itself throughout the war in the lack of options that the Acholi had to air their grievances.²¹⁴ Despite the various groups travelling to Juba to represent northern Uganda during the peace talks, it was the LRA/M that enjoyed the mantle of ‘spokesperson’ for the civilian population that they had been brutalizing for twenty years. Despite the rather tokenistic popular consultations held during the talks, the transitional justice blueprint for Uganda was negotiated in a closed room by two parties. One party was made up of representatives of a fratricidal rebel group, and the other of representatives of a state that had constructed, in the form of forced displacement, an unimaginably cruel architecture of violence and deprivation. After Juba, when discussions about transitional justice became very technical and divorced from politics, this uncomfortable truth was obscured.

²¹⁴ Dylan Hendrickson, *Dealing with complexity in peace negotiations: Reflections on the Lord’s Resistance Army and the Juba Talks* (London: Conciliation Resources, 2012), p.21.

Nevertheless, as an indication of the injustice of particular forms of justice, it continues to influence the way that people in Acholiland debate accountability and reconciliation today. It is to Juba that we turn in the next Chapter.

4. Justice at Juba?

Introduction

The previous chapter discussed complex notions of justice, accountability and identity in Acholiland in historical context. It argued that transitional justice, to paraphrase Alain Badiou, can never be an ‘uninherited reality’:¹ it will always be shaped, on application, by the structural, political and cultural context it inhabits. This chapter begins our detailed journey into the domestic political trajectory that transitional justice took in Uganda since the Juba talks began in 2006. It focuses on the construction of the Accountability and Reconciliation agreements that came to form the national framework for a transitional justice policy to address the legacies of the GoU-LRA conflict.

To date, academic debate about the role that justice issues played at Juba has focused on its exogenous role as either a facilitator or spoiler during the talks. Some have argued that the signing of the AAR agreements proved that peace and justice *could* be negotiated simultaneously during peace talks.² Others insisted that the agreements did not manage to overcome the fundamental impasse of the ICC arrest warrants and that this was the key reason why Kony failed to sign a Final Peace Agreement.³ Both interpretations brought the ‘peace versus justice’ dilemma into sharp focus, while the broader political context, including structural power dynamics between the two sides, historical understandings of conflict, and the internal dynamics of the negotiating parties, were obscured. This chapter seeks to contribute to the literature with an analysis of the talks that contextualizes the justice and accountability debate at Juba in the domestic politics of the conflict.⁴ In so doing, it draws upon a wide range of interviews with GoU actors involved in the talks, LRA/M negotiators, mediation team advisers and civil society

¹ Alain Badiou, *The Century* (New York: Polity Press, 2007).

² See Chapter 1, ft.5

³ Ibid.

⁴ The emphasis in this chapter is on the domestic politics around justice at Juba, rather than on the procedural nature of the Agreement on Accountability and Reconciliation (AAR) which can be found in the Annex, or the legal, political and administrative structure of ICC itself, or its own interpretation of what happened in northern Uganda. For analysis of the politics of the ICC referral see: Clark, ‘Chasing’; Branch, ‘International’; Allen, ‘Trial’. For legal interpretations of the AAR and its Annex see, Nouwen, ‘Complementarity’; Human Rights Watch, *Benchmarks for Justice for Serious Crimes in Northern Uganda* (New York: HRW, 2008); Otim and Wierda, ‘Uganda’.

representatives as well as newspaper reports and documentary evidence from the talks themselves.

This chapter provides a detailed account of the Juba process focusing in particular on the motives and actions of key GoU and LRA/M actors around justice and accountability during the talks. This lays the groundwork for a much clearer understanding of, firstly, how the AAR agreements came to be shaped and secondly, the trajectory that transitional justice took in Uganda, post-Juba. The first part of the Chapter explores the events and debates leading up to the talks. The chapter goes on to explore GoU and LRA/M approaches towards a political settlement at Juba, providing the context in which discussions about justice, accountability and reconciliation were framed. It argues that the AAR agreements were informed by political expediency, narrow self-interest and possibilities for narrative shaping. While they showcased the transitional justice ‘tool-kit’, the agreements were not rooted in engagement with its normative underpinnings, nor were they based on a political consensus about accountability and reconciliation. Rather, the AAR agreements were motivated by a desire to circumvent the ICC impasse and ensure progress on paper and the continuation of the talks, which, nevertheless, collapsed in December 2008 with the launch of Operation Lightning Thunder.

Background to the Juba Peace Talks

Since the late 1980s, the default approach of President Museveni and his closest military advisers towards the LRA has been outspoken impatience with negotiations and a declared determination keep fighting. Over the years, elements within the NRM and NRA (later UPDF) have stood to gain from the continuation of the war in the north.⁵ The government successfully portrayed the north - an area where it had virtually no popular support anyway - as a dangerous and peripheral space which must be ‘pacified’ in the interests of Ugandan peace and prosperity. This has allowed the GoU to conveniently ignore legitimate Acholi grievances, equating them with support for the LRA.⁶ The war has also provided a solid basis for GoU appeals to donors for increased

⁵ Adam Branch, ‘Political Violence and Peasantry in Northern Uganda, 1986-1998’, *African Studies Quarterly*, 8:2 (2005) pp.1-31.

⁶ Hendrickson, ‘Complexity’, p.18.

defence spending.⁷ It has proved highly profitable, particularly for UPDF commanders, who have allegedly appropriated war resources for personal enrichment.⁸

The first major military campaign against the LRA was launched in 1991. Operation North lasted for four months and was regarded a failure.⁹ Betty Bigombe, an Acholi who was appointed Minister of State for 'Pacification' of Northern Uganda in 1988, took a relatively independent position during those first military strikes, and this lent her some credibility with the LRA leadership.¹⁰ Towards the end of 1993 she made contact with Kony through intermediaries in Gulu, and began travelling to the bush for face-to-face meetings with the LRA high command. In early 1994 Bigombe managed to negotiate a delicate ceasefire, which quickly unraveled when Museveni declared in February, at a political rally in Gulu, that the LRA had seven days to lay down their weapons and hand themselves in to government forces. This ultimatum, Museveni later argued, was unavoidable, because military intelligence had been passed his way which clearly demonstrated that the LRA were just buying time to re-arm, and this time, the weapons were coming from the Khartoum government in Sudan.¹¹

Betty Bigombe later claimed that the military consistently fed Museveni false intelligence in order to prolong the war in the north,¹² and Adam Branch has argued that since 1994 the GoU has used the 'Sudan factor' to further 'demonize the LRA' and to resist engaging the movement on the broader socio-economic and political issues underpinning the rebellion.¹³ Indeed Khartoum and the LRA were in contact by 1994, but it was not until the collapse of the 'Gulu Ceasefire' that the GoS began providing 'significant' support to the LRA, including financial and military assistance.¹⁴ This assistance was in retaliation for the GoU's military and logistical support for the Sudan People's Liberation

⁷ Roger Tangri and Andrew Mwenda, *The Politics of Elite Corruption in Africa: Uganda in Comparative African Perspective* (Abingdon: Oxford, 2013), pp.68-90.

⁸ Andrew Mwenda, 'Uganda's politics of foreign aid and violent conflict: the political uses of the LRA rebellion', in Allen and Vlassenroot, 'Myth', pp.45-59, p.47-48.

⁹ Andre Le Sage, 'Countering the Lord's Resistance Army in Central Africa', *Institute for Strategic Studies* (July 2011).

¹⁰ The word 'pacification' was removed from her title in 1992.

¹¹ Mareike Schomerus, *The Lord's Resistance Army in Sudan: A History and Overview* (Geneva: Small Arms Survey, 2007).

¹² Betty Bigombe 'Challenges of Peace Talks and Mediation: addressing the question of justice', Public Lecture, Oxford University, 7 Feb 2012.

¹³ Branch, 'Political', p.19. See also, Billie O'Kadameri, 'LRA and Government Negotiations 1993-4', in Okello Lucima (ed.), *Protracted Conflict, Elusive Peace: Initiatives to end the violence in northern Uganda* (London: Conciliation Resources, 2002).

¹⁴ Ronald Atkinson, 'The Realists in Juba'? An Analysis of the Juba Peace Talks', in Allen and Vlassenroot, 'Myths', pp.205-223; p.206; for a detailed analysis of the LRA-Sudan relationship, see Schomerus, 'Sudan'.

Army (SPLA), which had been fighting a civil war against Khartoum since 1983. By the mid-1990s, the LRA had become a proxy militia for the Sudanese government, engaging the SPLA directly in battle in southern Sudan. With the support of the Bashir regime in Khartoum, abductions increased, and the LRA was now able to use southern Sudan as a base both for attacking the SPLA and for launching attacks inside northern Uganda.

The period after the 1996 elections in Uganda witnessed a more organized and concerted local effort towards establishing peace in the north. This was also the time when forced displacement became an official counter-insurgency policy, and was proceeding, in collaboration with humanitarian agencies, on a massive scale.¹⁵ In 1997, the recently elected MP for Gulu, Norbert Mao, working in coalition with a group of Acholi opposition MPs, lobbied parliament to formally investigate the situation in the north.¹⁶ The same year, an NGO, Pax Christi Netherlands, became involved in peace efforts and, through representatives, began engaging the LRA. While this effort got off to a slow start, Pax Christi would later play an important role at Juba.¹⁷ Other initiatives were launched in the late 1990s. In May 1997 the Acholi diaspora organised a *Kacoke Madit* (big meeting) in London. Funded by voluntary contributions, the meeting included more than 300 Acholi from Uganda and the diaspora, government ministers, religious leaders, and LRA representatives, including James Obita, who would later attend the Juba talks as an LRA/M delegate. This was a seminal meeting in the construction of the 'ethnojustice' agenda described in the last chapter. Despite in-fighting and tensions between delegates, agreement coalesced around the need, after years of war, to 're-instate traditional cultural values,' and the vital role these might play in ending the conflict.¹⁸

By this point a campaign was also underway to design and implement a blanket amnesty law to encourage an end to the fighting. The Acholi Religious Leaders Peace Initiative (ARLPI) met President Museveni in March 1998 and handed him a memorandum entitled, *A Call for Peace and End to Bloodshed in Acholiland*. It called for 'forgiveness and reconciliation as the centrepiece of the campaign for peaceful approach to the end of the

¹⁵ See Chapter 1, ft.35

¹⁶ The outcome of the parliamentary inquiry was not particularly favourable to interests in the north and ended up recommending a continuation of the military offensive.

¹⁷ Simon Simonse, Willemijn Verkoren and Gerd Junne, 'NGO involvement in the Juba peace talks: the role and dilemmas of IKV Pax Christi', in Allen and Vlassenroot, 'Myths', pp.223-42, p.226.

¹⁸ Bradbury, 'Overview'. This agenda is explored in more depth in chapter seven.

conflict' and was supported by *Kacoke Madit* and the Acholi Parliamentary Group.¹⁹ Despite broad parliamentary support for a blanket amnesty, in the past Museveni only ever expressed support for a limited amnesty for the 'mised,' and rejected the idea of pardons for 'bandits like Kony and his deputy Otti Lagony'.²⁰ But in May 1999 he changed his position, and endorsed the blanket amnesty approach whilst touring Gulu. The GoU line was that Museveni was responding to 'popular consultations', while the sceptics argued that the decision was part of his broader campaign to win support in the upcoming referendum on whether to move from one- party to multi-party rule.²¹

Just one day after Parliament passed the Amnesty Bill in December 1999, President Museveni travelled to Kenya to sign the 'Nairobi Agreement'.²² This, brokered by the Carter Center, was an agreement between President Bashir, who had been shaken by the 1998 US military strikes in Khartoum, and President Museveni.²³ Both made a formal commitment to stop funding and supporting rebel groups in the other's territories. In practice, both continued their relationship with the LRA and the SPLA respectively (neither rebel group was involved in the negotiations), but the agreement had some symbolic importance.

As part of the Nairobi Agreement, Bashir allowed the Ugandan military to use southern Sudan as a base from which to launch their most intensive military offensive to date. Operation Iron Fist began in 2002, bolstered by the post 9/11 decision of the US to include the LRA on its Terrorist Exclusion List.²⁴ Despite the deployment of 10,000 UPDF troops and the aid of US logistical support and helicopter gunships, the Ugandan army failed to outmaneuver the LRA high command. The weeks following the offensive saw a dismaying increase in LRA attacks and abductions, and between 2002 and 2005 the number of IDPs in northern Uganda sharply increased from 400,000 to 1.6 million.²⁵ Jan

¹⁹ Louise Mallinder, 'Uganda at a Crossroads: Narrowing the Amnesty', *Working Paper, Institute of Criminology and Criminal Justice QUB*, 2009), p. 20.

²⁰ 'Ugandan parliament approves long-awaited amnesty bill', Agence France Presse, 7 December 1999, <http://reliefweb.int/report/uganda/ugandan-parliament-approves-long-awaited-amnesty-bill> (accessed 01.02.2013).

²¹ Mallinder, 'Crossroads', p.22.

²² Patrick Oguru Otto, 'Implementing the 1999 Nairobi Agreement' in Lucima (ed.), 'Protracted', pp.52-7.

²³ Paul Zwier, *Principled Negotiation and Mediation in the International Arena: Talking with Evil* (Cambridge: Cambridge University Press, 2002), pp.205-09.

²⁴ Alexis Arieff and Lauren Ploch, *The Lord's Resistance Army: the US Response* (Washington D.C: Congressional Research Service, May 2014), p.12.

²⁵ Sandrine Perrot 'Northern Uganda: a "forgotten conflict" again? The impact of the internationalization of the resolution process', in Allen and Vlassenroot, 'Myths', p.188.

Egeland, the UN Humanitarian Coordinator, visited in November 2003 and delivered his oft-quoted summation that this was the ‘the biggest forgotten, neglected humanitarian emergency in the world today’. This, Sandrine Perrot argues, ‘floodlighted’ the situation in northern Uganda, and before long hundreds of UN agencies, NGOs, journalists, and consultants rushed into the area.²⁶

In March 2004 a second Iron Fist Offensive began, and was more effective in its direct targeting of the LRA leadership, forcing key figures to give up or escape, abandoning family members and recruits. Towards the end of the year Betty Bigombe, who had been ousted in the 1996 elections, returned to northern Uganda as a USAID consultant. With President Museveni’s approval and the support of UN, aid agencies, and local officials, she began to re-open her links to the LRA. Despite the ICC investigation now underway, the Ugandan government declared a ceasefire in November 2004 in the hope that Kony and his key commanders would come out of the bush and accept an amnesty. It was not long, however, before Sam Kolo, the LRA’s chief negotiator, was rescued by the UPDF, fearing for his life and claiming that Kony had ‘turned against him’.²⁷ Schomerus’s LRA informants, reflecting on the failure of that set of talks, argued that Kolo had been bought off by the GoU and that Betty Bigombe was too close to the GoU.²⁸ According to Pax Christi, the ICC arrest warrants were the final nails in the coffin in which her attempt to persuade the LRA to accept the government’s amnesty in return for peace was buried.²⁹

Around mid-2004, there was a ‘major evolution’ in donor identity and approach towards the situation in the north.³⁰ After several failed attempts to get the LRA to the negotiating table since the mid-1990s, USAID grew impatient and the US government adopted a more focused preference for a ‘quick and permanent’ military solution to the crisis.³¹ This provided more political space for other countries, most notably what Perrot calls the ‘ethical and Pearsonian’ Nordic countries, to take the lead in facilitating dialogue between the LRA and the GoU.³² The GoU was able to exploit donor divisions and bat away a potential referral of the situation in the north to the UNSC, but the spectre of an

²⁶ Perrot, ‘Northern’, p.188.

²⁷ Allen and Vlassenroot, ‘Introduction’, p.17.

²⁸ Schomerus, ‘Eating’, p.61

²⁹ Simonse et. al, ‘NGO’, p.227.

³⁰ Perrot, ‘Northern’, p.191.

³¹ Perrot, ‘Northern’, p.190-91

³² Perrot, ‘Northern’, p.192.

‘internationalised’ conflict on Ugandan soil became very real during 2005, and it unnerved Museveni.³³ Against the backdrop of donor impatience, national elections scheduled for 2007, and the hosting of the Commonwealth Heads of Government Summit (CHOGM) that same year, the long-term LRA conflict became a high-stakes issue for Museveni.³⁴

Across the border in Sudan, major political shifts were occurring during this period. In January 2005 the SPLA/M and the GoS signed the Comprehensive Peace Agreement (CPA). On paper at least, this marked an end to the long-running north-south civil war.³⁵ When John Garang was inaugurated as the first President of the semi-autonomous South Sudan (GoSS) in July 2005, he was insistent that the continued military presence of both the LRA and UPDF on GoSS soil represented an ‘unacceptable’ threat to his people.³⁶ Only three weeks after his Presidency began he was killed in a helicopter crash while returning from Uganda, where he had been meeting his historic ally and close friend President Museveni. Garang was replaced by his deputy and head of the SPLA, Salva Kiir Mayardit, and Dr Riek Machar was appointed vice-president. Machar’s relationship with Garang had not been straightforward, and during the Sudanese civil war the two had been at different points trusted allies and the bitterest of enemies. The new GoSS leadership created a different dynamic in GoSS-Uganda bilateral relations, because neither Kiir nor Machar had a close personal association with Museveni. Machar, meanwhile, when fighting in opposition to Garang’s SPLA, had formed connections with the LRA. These new dynamics created a promising avenue through which to begin exploring peace talks, and Riek Machar, with the help of Pax Christi, made contact with the LRA in late 2005. It was also in late 2005 that the five ICC arrest warrants were unsealed. Joseph Kony, Vincent Otti and three other LRA commanders were now publically wanted by the ICC.

In February 2006 meetings took place between Pax Christi and LRA/M representatives in Nairobi. Twelve days later, a small delegation, consisting of representatives from both took a chartered plane to Juba to meet Machar.³⁷ Atkinson argues that during these

³³ Perrot, ‘Northern’, pp.192-7; Chris Dolan, *Uganda Strategic Conflict Analysis* (SIDA, 2006), p.17

³⁴ Hendrickson, ‘Complexity’, p.14.

³⁵ Atkinson argues that Khartoum continued to support LRA, at least until late 2005/early 2006. See Atkinson, ‘Realists’, p.207.

³⁶ Atkinson, ‘Realists’, p.208.

³⁷ Schomerus, ‘Eating’, p.65.

meetings, a ‘formal accord’ was structured around three central points: the GoSS would facilitate peace negotiations between the GoU and the LRA; the LRA would cease all hostilities inside South Sudan; and, if the LRA did not accept these conditions, the GoSS would force them from South Sudan.³⁸ He argues that the LRA were convinced that the GoSS were ‘serious about both the carrots and sticks that they were offering,’ and also very aware that the operating space they had in southern Sudan before the CPA was now greatly diminished.³⁹ On 3 May Riek Machar travelled to remote Nabanaga on the Sudan-DRC border and finally met Kony face to face. During the meeting Machar handed Kony \$20,000 for food and ‘not weapons’.⁴⁰ The encounter was filmed and later broadcast by Reuters. Reports noted that Kony looked less relaxed than his deputy, Vincent Otti, who had done a lot of the groundwork with Machar leading up to the meeting. At this point the GoU was outwardly skeptical. The UPDF spokesman, Major Felix Kalayigye, insisted that,

‘you can’t trust Kony. He always makes these moves when his is desperate...we hope this time he means it but there is no ceasefire and we will continue to hunt him’.⁴¹

As will be explored in more detail below, right up until the very last moment, the GoU position on talks was unclear. Nevertheless, in July 2006 a GoU delegation travelled to Juba. The LRA/M delegation had been in the GoSS capital since early June, preparing for the talks.⁴² On 14 July 2006, the two delegations sat down together with the GoSS mediation team⁴³, and the Juba peace talks officially commenced. On 5 October, a UN OCHA-managed donor trust fund, the ‘Juba Initiative Fund’, was set up to co-ordinate and channel support from donors to ‘facilitate the basic necessities of the Juba process’.⁴⁴ Money came in from the British, Danes, Austrians, Swedes, Norwegians and Swiss, who all acknowledged that the talks seemed promising, but felt that in light of the ICC arrest

³⁸ Atkinson, ‘Realists’, p.210.

³⁹ *ibid.*

⁴⁰ ‘South Sudan government gives Ugandan LRA rebels 20,000 dollars’, Sudan Tribune, 24 May 2006, http://www.sudantribune.com/spip.php?page=imprimable&id_article=15834 (accessed 03.02.13).

⁴¹ ‘Army doubts Kony Peace Offer’, New Vision, 25 May, 2006 <http://www.newvision.co.ug/D/8/12/500473> (accessed 11.03.2013).

⁴² ‘LRA rebels arrive for Sudan talks’, BBC News, 8 June 2006, <http://news.bbc.co.uk/1/hi/world/africa/5060666.stm> (accessed 12.12.12). They were accompanied by representatives from Pax Christi and the St Edigio.

⁴³ When the talks started, the understanding was the GoSS would ‘host’ them and Pax Christi, represented by Dr Oniek, Professor Assefa and Dr Simonse would be responsible for the mediation. However, as Schomerus, points out, ‘as the Juba Talks unfolded in 2006 it had become clear that the role of the mediator was fully occupied by Machar; Professor Assefa had been effectively sidelined’, see Schomerus, ‘Eating’, p.165.

⁴⁴ ‘United Nations Launches Juba Initiative Fund’, UN Press Release, 5 October, 2006.

warrants they were in difficult territory. Donor support placed the Juba talks on what one analyst called a ‘short leash’.⁴⁵ With the ICC Chief Prosecutor publicly trumpeting, just a week into the Juba talks, that the ‘best way to finally stop the conflict...is to arrest the top leaders’, it became quite clear that donors would only tolerate an agreement that addressed the accountability issue.⁴⁶ With donor money also came pressure to ensure that agreements were drawn up and concluded quickly and decisively. The UN also provided important political support but not until December 2006, when Jan Egeland gave his public endorsement. The same month former Mozambique Prime Minister Joaquim Chissano was appointed UN Secretary General’s Special Envoy for LRA-affected areas.⁴⁷

At the outset, the talks were hastily organized around five agenda items: (1) cessation of hostilities (2) comprehensive political solutions (3) justice and accountability (4) disarmament, demobilization and reintegration (DDR), and (5) a permanent ceasefire. As will be described below, the Juba Process was characterized by ‘a pattern of sputtering progress punctuated by frequent delays’.⁴⁸ Between July 2006 when the talks began, and December 2008 when military Operation Lightning Thunder⁴⁹ was launched against the LRA, there were periods of hyperactivity followed by long hiatuses.

GoU and LRA/M approaches at Juba

The following section explores how the two parties, the GoU and the LRA/M, approached the talks at Juba. Neither side had much internal coherence. When the Juba talks began there were a range of positions on the GoU side. There were certainly senior government figures who appeared to have a genuine commitment towards the peace process. Others wished the talks well and felt it would be a ‘pleasant surprise’ if an agreement was signed, but were largely resigned to the probability that the whole process was ill-fated. But those with the loudest voice, the largest concentration of power, and

⁴⁵ International Crisis Group, ‘Peace in Northern Uganda?’, *Africa Briefing No.41* (13 September 2006), p.17.

⁴⁶ ‘Kony will eventually face trial, says ICC Prosecutor’, IRIN News, 20 July 2006.

⁴⁷ In early 2007, observers joined the process Mozambique, Kenya, South Africa, Tanzania and DRC.

⁴⁸ International Crisis Group, ‘Northern Uganda Peace Process: The Need to Maintain Momentum’, *Africa Briefing No.46* (14 September 2007), p.4.

⁴⁹ Operation Lightning Thunder was a joint UPDF, DRC (FARDC) and Southern Sudan (SPLA) military operation against the LRA which began on 14 December 2008. In March 2009 it was re-named Operation Rudia. See Schomerus, ‘Eating’, p.236.

control over information, were those in government and in the military who were intent on what one UPDF official called the ‘icing of an LRA surrender’.⁵⁰ The priority remained military victory rather than a negotiated settlement.

This range of positions was reflected in the composition of the GoU delegation at Juba. The head of the delegation, Minister of Internal Affairs, Dr Ruhakana Ruganda, was generally regarded to have been committed to the idea of a negotiated settlement. A cable dated 20 September 2007 from the US Embassy in Kampala on the progress of the peace talks, notes that certain

‘government civilian officials, such as Rugunda and many northern leaders, support an expedited process with clear direction that addresses domestic political considerations, such as public opinion in the north...Rugunda for example would view a military solution as a last resort’.⁵¹

His appointment reassured those who had been sceptical about the Government’s intentions at Juba, but critics also wondered whether Ruganda may have been strategically placed to give the impression that the government was committed to the process.⁵² In any case, alongside Rugunda sat Colonel Charles Otema, commander of the UPDF 4th Division, who had led the fight against the LRA for many years. From the outset Otema, personally, and the military he represented, were perceived to be ‘anxious to deal with the LRA as a security problem, and welcome a hard line’.⁵³

Joseph Kony did not represent the LRA/M at Juba, nor did any other senior LRA commander for that matter. Throughout the talks the LRA leadership remained in their camps in Ri-Kwangba and Nabanga in South Sudan, near the border with the DRC. The LRA/M delegation team that Kony sent to Juba had ‘weak’ and ‘tenuous’ links with the high command in the bush, and was made up primarily of members of the Acholi diaspora.⁵⁴ Before the talks began Machar had tried to convince Kony’s second-in-command Vincent Otti to head the delegation, but he had refused.⁵⁵ Father Carlos Rodriguez, a respected Spanish priest who had lived and worked in Acholiland for years, said on the radio in early July that,

⁵⁰ Author interview with UPDF Major, Kampala, 17.06.2012.

⁵¹ 07KAMPALA1467, 20.09.2007, UNCLASSIFIED

⁵² Author interview with Zachary Lomo, Cambridge, 29.03.2012

⁵³ 07KAMPALA1467; Otema was only present at the talks for a short while but his presence made a symbolic impact.

⁵⁴ Mareike Schomerus and Betty Acan Ogwaro and ‘Searching for Solutions in Juba: an overview’, *Accord: an international review of peace initiatives* (London, 2002), p.11.

⁵⁵ Ibid.

'I doubt that the 16-member negotiating team that Kony has named has any power to negotiate anything on behalf of the LRA, because these are ordinary people that have not been in the bush with the LRA'.⁵⁶

In contrast to the 'often amateurish'⁵⁷ demeanor of the LRA/M, the GoU had a high-level delegation with far greater technical capacity, but both delegations shared a structural dimension. In both the political wing was subordinated to the military high command, headed, respectively, by President Museveni and Joseph Kony, neither of whom were present at the talks.⁵⁸ Martin Ojul, the first Chair of the LRA/M delegation, gave expression to the difficult situation both negotiating teams found themselves in:

'no matter which side one belongs to, the real decision makers are not in Juba. For the government side, the finality resides in the hands and wisdom of the all powerful tenant of Kampala state house, located on plot 1, Nakasero Close, while for the LRA/M, the decision makers (The High Command) are roaming and oscillating (in) the densely forested triangle area stretching from Garamba in DRC, Obo adjacent areas of Central Africa (CAR) and Rigkwamba Tambura Yambio areas in Western Equatoria of Southern Sudan'.⁵⁹

By 2006 both sides had an interest in ending the war, but they arrived in Juba wanting different types of peace. Right until the last moment, the GoU sent out mixed messages about their willingness to engage in negotiations. From mid-June 2006 various government ministers made statements to the media which indicated that the GoU would not consider offering Kony amnesty, and was unwilling to send a delegation to Juba to meet a barely viable LRA/M negotiating team representing indicted commanders.⁶⁰ By early July the position had shifted. On 29 June the government announced that it *would* be sending a delegation to Juba, and five days later Museveni offered Kony a conditional amnesty.⁶¹ Some observers interpreted the GoU position as tactical rather than chaotic, aimed at keeping the LRA/M and mediation team guessing, and then taking control of the situation and insisting on a 'speedy, expeditious' set of talks.⁶² President Museveni and the UPDF wanted a 'negative peace'.⁶³ They wanted to

⁵⁶ 'Uganda: Amnesty Offer Blow for Rebel Chief Arrest Plans', Institute for War and Peace Reporting, 6 July 2006.

⁵⁷ Schomerus, 'Searching', p.11

⁵⁸ Hendrickson, 'Complexity', p.17

⁵⁹ Martin Ojul, 'Africa to Lead, Placing the Future in Our Hands: tackling the issues of Accountability and Reconciliation in the juba peace talks within the context of ICC indictments and other relevant provisions in the Rome Statute', (n.d), (on file with author).

⁶⁰ See for example, 'No Amnesty for Kony says Amama', *New Vision* 9 June 2006; 'Govt doubts Kony delegates', *New Vision*, 22 June 2006;

⁶¹ 'Museveni gives Kony amnesty', *New Vision*, 4.07.2006.

⁶² ICG, 'Peace?', p.12.

neutralise the LRA threat quickly and decisively, and the talks were seen as generous way of offering the LRA a 'soft landing': 'We are offering them an exit', said Museveni, 'there will be no negotiations of personal benefits, but discussion of mechanism of a soft landing'.⁶⁴ On 20 September 2006, two months into the talks, President Museveni expressed impatience with having to address anything beyond a straightforward end to the fighting:

'Advise them to come out of the bush and stop talking about irrelevant things in Juba... they should be hanged for committing many atrocities. But we want a shortcut to peace... We have elected leaders who can talk about rehabilitation but not them (LRA) who have been stopping development. This is childish. They should have been hanged but the government is willing to forgive them'.⁶⁵

The LRA/M delegation's public statements indicated a very different view, which emphasized the potential of the Juba talks to cement a more 'positive peace'⁶⁶, which included 'comprehensive solutions' and negotiations which would address the underlying causes of the conflict, the very things that Museveni was dismissing as 'irrelevant'. It should be noted, though, that at times it was not clear whether addressing the underlying causes of conflict meant providing money, status and protection to senior LRA/M figures, or whether the emphasis was on producing a more substantial peace settlement for northern Uganda: these two motivations largely coexisted and were seen, to varying degrees, as mutually supportive in the LRA/M.

A profound lack of trust between both sides shaped the dynamic at Juba. There was a strong assumption within the GoU ranks, even before the talks started, that Kony himself did not really 'want' peace. Since the talks collapsed this has become part of a dominant post-Juba political narrative, one that largely absolves the GoU from any role in the failure of the talks. During Juba this was the central justification for the GoU position on the need for negotiation deadlines and military preparedness. At the time there were important figures within the GoU who had a more nuanced view of Kony's intentions. Rugunda, for example, argued that 'he was looking for an opportunity where he could be rehabilitated but he was not sure about some of the issues, especially the

⁶³ John Galtung described negative peace as a mere absence of war. Positive peace on the other hand, is the 'when social justice has replaced structural violence...it is not limited to the idea of getting rid of something, but includes the idea of establishing something that is missing'. See Alicia Cabezudo and Magnus Haavelsrud, 'Rethinking Peace Education', in Charles Webel and John Galtung, (eds.), *The Handbook of Peace and Conflict Studies* (Abingdon: Routledge, 2007), pp.279-299, p.280

⁶⁴ Quoted in Dolan, 'Strategic', p.18.

⁶⁵ 'Kony indictment at ICC stands, says President', New Vision, 20 September 2006.

⁶⁶ See fn.63

ICC.⁶⁷ Generally, though, the hawks had the President's ear throughout the process. In October 2006, three weeks after the LRA had failed, under the terms of an August Cessation of Hostilities Agreement (CoH), to assemble at Owiny-Kibul in southern Sudan, military chiefs gave the President an intelligence briefing at State House. In a PowerPoint presentation, he was advised that: 'based on available intelligence the LRA is preparing for war...most likely the talks will not succeed; high chance of return to war'.⁶⁸ The reality was more complicated, and LRA/M representatives insisted that the failure to assemble was due to unauthorized UPDF troop movement near the area.⁶⁹ But already by October 2006, just three months into the peace talks, the dominant GoU position was informed by an apparent certainty that the LRA was purchasing military and communication equipment, retrieving arms and ammunition, training new radio operators in DRC bases, and cultivating and re-stocking with food stuffs in the Garamba zone.⁷⁰ Stephen Kagoda, Permanent Secretary to the Ministry of Internal Affairs and a member of the GoU delegation at Juba explained that,

'honestly speaking, we went into the talks not expecting anything out of them. We did not expect Kony to come out...we knew that whenever Kony was under pressure, he would go for peace talks to re-organise'.⁷¹

Of course it is impossible to know whether or not Kony 'wanted' peace and unwise to infer conclusions about his intentions, because he has never given very much away. Government and UPDF assertions about Kony's intentions are more reliably interpreted as an indicator of their own perceptions, or the manner in which they chose to interpret the situation. In the early stages of the peace talks it was the GoU who observers considered to be the most unwilling party at the table. LRA/M delegates complained regularly that the government side was 'more interested in negotiating surrender than the causes of the conflict'.⁷² The reluctance to address the broader socio-economic and political issues related to the war was shared across the GoU delegation. Rugunda recalls that:

⁶⁷ Author interview with Hon. Minister Ruganda, Kampala, 04.05.2012.

⁶⁸ 'Intelligence Briefing to Ministers and Security Chiefs', (n.d) October 2006, (on file with author).

⁶⁹ Schomerus's study provides a lot of detail on the numerous GoU ceasefire violations during this period. See Schomerus, 'Eating', pp.83-127.

⁷⁰ Ibid.

⁷¹ Author interview with Stephen Kagoda, Kampala, 12.06.12.

⁷² Justine Labeja, Acting Leader, LRA Peace Team, 27 April 2010, quoted in Hendrickson, 'Complexity' p.13. See also, Schomerus, 'Eating', where she quotes Riek Machar's frustrations with GoU lack of willingness and intransigence.

‘it was not just the President and State house that was uncomfortable. I was uncomfortable. Kony and his people had no right to talk about these issues. They had no mandate’.⁷³

But despite serious reservations, the GoU’s role in the talks was carefully choreographed and performative from the outset. A senior Government official and part of the GoU delegation at Juba described how on 1 May 2006, a GoU team travelled to South Sudan in secret to discuss peace talks.

‘there were people who believed that the government was not interested in peace so how do you convince those people we are for peace? To *show* everybody that we are interested in peace.’⁷⁴

That, he argues, ‘was one of the major reasons’ for agreeing to the process.⁷⁵ Betty Bigombe recalls how in private conversations with the President she convinced him that commitment to the Juba process was a ‘legacy issue’.⁷⁶ This was a powerful argument, particularly in the context of recent international and domestic allegations of corruption and electoral malpractice, and the decision of some donors to re-programme direct budgetary support in response to the government’s failure to resolve the conflict in the North.⁷⁷ ‘The war was tainting his image’, Bigombe recalls telling Museveni, ‘think about economic production and HIV/AIDs, where Uganda has been an example, solving the war like this would only enhance these successes’.⁷⁸

Museveni’s military advisers clearly understood that a government decision to withdraw from the process would be interpreted badly by the international community, which by late 2006 was engaging quite seriously with the talks. Military briefings given to Museveni, at least until early 2007, stressed the need to ‘prepare for a resumption of hostilities’ but also to ‘keep the Government mediation team intact to reassure the international community and population of government commitment to talks’.⁷⁹ On October 21 2006 Museveni travelled to Juba. According to LRA/M spokesperson Godfrey Ayoo, Museveni had had a meeting with the LRA/M delegation and said things which ‘were all abusive – indicating that he is never interested in peace talks’.⁸⁰ Uganda’s

⁷³ Author interview with Hon. Minister Ruganda, Kampala, 04.05.2012.

⁷⁴ Author interview with senior Government official, Kampala, 14.06.12.

⁷⁵ Author Interview with Stephen Kagoda, Kampala, 12.06.12.

⁷⁶ Betty Bigombe, ‘Challenges’.

⁷⁷ ICG, ‘Peace?’, p.11.

⁷⁸ Betty Bigombe, ‘Challenges’.

⁷⁹ Intelligence Briefing to Ministers and Security Chiefs, (n.d) October 2006, (on file with author).

⁸⁰ Ibid.

deputy foreign minister, and deputy head of the GoU delegation at Juba, Henry Okello Oryem, denied this, telling journalists that ‘to the contrary (Mr Museveni) used the opportunity to make it very clear that he had come all this way to support and encourage the peace process.’⁸¹ But in a contradictory, almost macabrely candid assertion of government strategy, one senior government official explained that at Juba, ‘we were pretending! We knew he would never sign any stupid peace document!’⁸²

A calculated risk for the GoU was the potential for the talks to provide too great a dialogic space to the LRA/M delegation. There was a feeling, certainly by January 2007, that the diaspora delegates were gaining too much credibility among donors and mediators at Juba. A Security and Intelligence briefing dated 12 January expressed a clear concern that the LRA/M delegation was becoming too effective as a negotiating party. The briefing raised the possibility that the LRA might ‘form a political wing,’ and stated that the LRA/M diaspora was courting Acholi intellectuals to make the movement ‘more intellectually credible’.⁸³ In fact, by early January the talks had been in stalemate for a while, and on 9 January President Bashir and Vice President Salva Kiir had both announced separately that the LRA was not welcome in Sudan any longer. Fears that the LRA/M were expanding their political capital were, however, possibly linked to the expansive demands it put forward in early November 2006 for proposals for Agenda Item 2, and a disquiet about the platform being given to LRA/M, especially when its mouthpieces, according to Museveni, were ‘uninformed Ugandans who have been out of the country for 20 years’.⁸⁴

As Zachary Lomo, former director of the Refugee Law Project, has argued, Kony and the LRA must be portrayed as lunatic:

‘if you present him as someone with capacity then you risk shoring up support for him... the whole agenda was to mystify him, not to make him a credible force, it was vital to make sure he looked like someone with no plans’.⁸⁵

By early 2007 the military continued to counsel Museveni to stick to the talks, but increasingly stressed the need for specific time-frames with terminal dates, and robust

⁸¹ ‘Museveni meets Ugandan LRA rebels’, BBC News, 21.10.06.

⁸² Author interview with senior government official, Kampala, 15.06.2012

⁸³ Intelligence Briefing to Ministers and Security Chiefs, 12.01.2007, (on file with author).

⁸⁴ ‘Museveni meets Ugandan LRA rebels’, BBC News, 21.10.06.

⁸⁵ Author interview with Zachary Lomo, Cambridge, 29.03.2012

military preparation to move into Garamba ‘immediately after the talks collapse’.⁸⁶ At this point it was the legal advisors to the Juba process who were exercising the most caution. On 12 December 2006 Owiny Dollo, a legal adviser to the mediation team, and former Minister of State for northern Uganda, held a meeting with Kony, Otti and other LRA commanders, at Ri-Kwangba, to discuss legal issues related to the ICC warrants. Owiny-Dollo travelled to State House in early January 2007 and sat down with the President:

‘I told the President who already wanted military action, yes I agree, the man will not sign a document but this is a grand opportunity for you to show the world what Kony is’.

The President, Dollo recalls, was belligerent, complaining that Kony was ‘fooling us’, but he was advised:

‘please do not attack, let the Juba peace talks play itself out, we know he will not sign, then once and for all, the world will know who the spoiler is. And the President, he went to the very end’.⁸⁷

Where would this duplicitous approach leave discussions on the third agenda item on accountability and reconciliation? Barney Afako, another legal adviser to the mediation team, writes that at the beginning of the talks the mediation team had ‘persuaded’ the parties to deal with accountability and reconciliation as the third agenda item, noting that:

‘This placement of the issue allowed for a gentle build-up towards the negotiations on justice. More crucially it ensured criminal justice was located in a more appropriate context amongst the political, historical, social and economic justice issues that also needed to be addressed’.⁸⁸

But this was optimistic because it presupposed that there would only be one ‘appropriate context,’ and that this could be agreed upon. The reality was that a singular or coherent narrative about the causes and events of the war, one shared by both parties, was an elusive prospect.⁸⁹ From the outset Juba lacked the potential for a form of what Mark Osiel calls *civil dissensus* or ‘the kind of solidarity embodied in the increasingly respectful way that citizens can come to acknowledge the differing views of their fellows’.⁹⁰ The power politics, asymmetries, deep distrust, and duplicity guiding the process provided no firm foundation upon which discussions could be based; this meant that there were no

⁸⁶ Intelligence Briefing to Ministers and Security Chiefs, 12.01.2007, (on file with author).

⁸⁷ Author interview with Judge Owiny-Dollo, Kampala, 08.06.2012.

⁸⁸ Barney Afako, *Negotiating in the shadow of Justice* (London: Conciliation Resources, 2010).

⁸⁹ Lara Nettlefield, *Courting Democracy in Bosnia and Herzegovina: The Hague Tribunal’s impact in a postwar state* (Cambridge: Cambridge University Press, 2010), p.29

⁹⁰ cf Nettlefield p.29; Mark Osiel, *Mass Atrocity, Collective Memory and the Law* (New Brunswick: Transaction Publishers, 2000), p.29.

universally accepted rules which might govern exchanges, and no ‘procedures establishing agreement on how to disagree’.⁹¹ It is against this backdrop that the ICC’s role at Juba should be understood. Certainly, the ICC’s investigation and arrest warrants shaped the debate on justice, and, more specifically, the AAR, but those debates were, in turn, informed by historical and political dynamics far wider and deeper than the controversial presence of the international court.

Understanding ICC narratives at Juba

‘The ICC can help us’: GOU approaches

When the GoU ICC referral was made public in 2004, most observers assumed that Uganda - a state party - had initiated the move. The court was happy to play along with this interpretation, maintaining that it was ‘simply doing its job by following up requests from Rome Statute signatories’.⁹² Over time, the sequence of events has been called into question. The former director of the Refugee Law Project (RLP), Zachary Lomo, recalled a private roundtable meeting with the ICC Chief Prosecutor in New York, in 2006, hosted by the Open Society Institute. According to Lomo:

‘he was clear in this meeting that the court had taken the first steps with the Uganda case, and had been proactive about initiating a case there. It was them that approached the Ugandan government. He was asserting himself and wanting to show that he was pushing the case forward’.⁹³

Barney Afako agrees, arguing recently that the ICC arrived in Uganda ‘having lobbied for a referral’.⁹⁴ At the time, international justice promoters were highlighting the court’s potential to end the conflict in northern Uganda, but as far as the GoU was concerned the referral was an attractive prospect because it could help its military efforts. Stephen Kagoda was unequivocal about this:

⁹¹ *ibid*

⁹² Matthew Brubacher, ‘The ICC investigation of the Lord’s Resistance Army: an insider’s view’, in Allen and Vlassenroot, ‘Myth’, pp.262-279, p.268

⁹³ Author interview with Zachary Lomo, Cambridge, 29.03.2012; See also, Angelo Izama, ‘Secret Dealings that got LRA before world court’, *Daily Monitor*, 18.05.2008, http://publicinternationallawandpolicygroup.org/wp-content/uploads/2011/04/wcpw_vol03issue20.html#u1 (accessed 03.04.2011).

⁹⁴ Barney Afako, ‘Experiencing Justice in Fragile and Conflict-affected contexts’, Alastair Berkeley Memorial Lecture, London School of Economics and Political Science, 7 November 2012.

‘we thought only a military operation would get rid of Kony but our military did not have jurisdiction in Sudan. That is why we listened to the ICC: how else do we handle this? The ICC can help us.’⁹⁵

A senior adviser to President Museveni concurred:

‘when we briefly talked about transitional justice, we talked about it as an extension of military strategy; at first, we wanted the ICC but then it became clear that Kony might accept traditional mechanisms; after all, he is a weird guy, he changes his mind, so we needed the ICC to be flexible’.⁹⁶

The ambivalent position the GoU subsequently took towards the ICC, and its frustration with the court’s absolutist position on maintaining the warrants despite their spoiler potential in the peace talks, was down to a lack of knowledge about the role and function of the court. Barney Afako points out that when they signed the Rome Statute:

‘the Government of Uganda just thought they were signing another international treaty...I have spoken to several senior statesmen who now say they had no idea what they were signing up to’.⁹⁷

This is a view shared by government ministers involved in the Juba Process. One explained that ‘the president does not understand the International Criminal Court...he never has done’.⁹⁸ A senior UPDF official expressed frustration that:

‘the Government of Uganda did not understand the impact of referral...they surrendered and admitted defeat in brining Kony to justice. They did not get an opinion about complementarity and they did not think about an exit strategy. Political gains clouded appreciation of ramifications’.⁹⁹

At first it was presumed that the ICC *would* be flexible, and government officials were relatively loose-mouthed in their casual undermining of the ICC’s jurisdiction when it proved politically expedient. At a ‘Reconciliation Stakeholders Conference’ in Gulu in December 2004, Rugunda told an assembled group of Acholi elders, religious leaders and politicians, that ‘the ICC is a tool that the government is using to investigate some of the leaders of the LRA’.¹⁰⁰ At the same time he acknowledged the possibility that circumstances might shift, and said that ‘if there are positive changes like peace talks by

⁹⁵ Author interview with Stephen Kagoda, Kampala, 12.06.12. Clark argues that the LRA case was referred to the ICC, on grounds which contradicted the OTP’s own investigative and prosecutorial policies: not because the Ugandan judiciary was ‘unable’ or ‘unwilling’ to prosecute the LRA but because its military and police were unable to ‘apprehend’ or capture the LRA. See Clark, ‘Law’, p.43.

⁹⁶ Author interview with senior presidential advisor, Kampala, 02.05.2012

⁹⁷ Barney Afako, ‘Experiencing’.

⁹⁸ Author interview with Government Minister, Kampala, 18.09.2012

⁹⁹ Author interview with UPDF official, Kampala, 22.05.12

¹⁰⁰ Reconciliation Stakeholders Conference Report, Gulu, 9-10 December 2004, (on file with author).

the LRA', then 'the Government and ICC will work out an adequate agreement'. In the meantime he said, 'the ICC is being told now to go slow with its investigations'.¹⁰¹

In the run-up to the beginning of the talks, Museveni made public statements to the effect that the ICC warrants could be withdrawn if the LRA behaved well. On 16 May 2006 he told journalists that if Kony was 'serious about a peaceful settlement', the GoU would 'guarantee his safety'.¹⁰² Just ten days before the talks officially began, on 4 July 2006, he offered Kony amnesty, conditional on whether he 'responds positively' during the talks and 'abandons terrorism'.¹⁰³ This offer was linked to a real frustration that the ICC warrants had not resulted in an effective regional military effort to 'hunt' Kony. Conflating the powers and functions of the UN and the ICC, Museveni complained that:

'the noble cause of trying Kony before the ICC has been betrayed by the failure of the United Nations, which set up the court, to arrest him, despite knowing his location in the DR Congo...I don't have the capacity to hunt for Kony, they don't allow us to hunt for him... the UN system has no moral authority now to demand for Kony's trial after failing to arrest him for the nine months he has been in Congo.'¹⁰⁴

The arrest warrants still had an important function: they could be used as a bargaining chip during the peace talks, but only if the ICC would play the game.¹⁰⁵ On 19 September Rugunda suggested to reporters that the Acholi traditional justice process, *Mato Oput* could provide the solution to the ICC impasse at Juba:

'the ICC supports the Juba talks and they would like to see an end to the conflict. The ICC also wants justice done and is opposed to impunity. In the mato oput system, we hope to have a win-win situation'.¹⁰⁶

But the reality was far more complicated. The ICC had, in fact, never expressed public support for the Juba process, and just prior to Rugunda's statement it had, according to the *Daily Monitor* newspaper, asked its Registrar to submit a written report by 6 October on the progress made so far in the execution of the arrest warrants, and the co-operation of the relevant states. The ICC, the article stated 'stressed that the arrest of Kony and his deputies was vital for their effective prosecution and prevention of further crimes'.¹⁰⁷

¹⁰¹ Ibid.

¹⁰² Atkinson, 'Realists', p.213

¹⁰³ 'Uganda: Amnesty Offer Blow for Rebel Chief Arrest Plans', IWPR, 6.07.06.

¹⁰⁴ 'Museveni gives Kony amnesty', *New Vision*, 4.07.2006.

¹⁰⁵ Afako, 'Experiencing'.

¹⁰⁶ 'President Museveni appoints justice team', *New Vision*, 19.09.2006.

¹⁰⁷ 'Museveni, Juba Team meet over Kony Arrests', *Daily Monitor*, 18.09.2006.

'It might be a trap': LRA ICC narratives

In the early stages of the talks, on 20 September 2006, Vincent Otti said that he would sign a peace deal, but, referring to the ICC warrants, declared that 'not even a single LRA soldier will go home before it is lifted... the ICC is the first condition, without that I cannot go home because it might be a trap'.¹⁰⁸ President Museveni responded on Mega FM, the Gulu-based radio station, that indictments would be dropped but only when 'terrorists' accepted a peace deal, saying 'the removal of the indictments will be a reward for their signing of the agreement. Otherwise you (rebels) will die on our hands or the hands of the ICC'.¹⁰⁹ A few weeks later, on 9 October 2006, as the LRA/M was becoming increasingly frustrated by UPDF cessation of hostilities violations, Otti toughened up his position on the ICC in an interview with the *Sunday Monitor* newspaper, arguing that the LRA High Command would not sign a deal, let alone leave the bush, before receiving 'documentary evidence' the warrants had been dropped.¹¹⁰

This was 'the impasse', widely reported in the press, and antagonistically raised on both sides. But the political dynamics behind the impasse have been neglected in most of the literature. A closer interrogation of statements made by the LRA leadership and the delegation in Juba, reveal a more nuanced set of attitudes towards the arrest warrants. Firstly, similar to the GoU, there was a clear lack of understanding about the legal basis, jurisdiction and powers of the ICC.¹¹¹ Secondly, and most neglected, was a clear receptiveness to the idea of the Court as a forum for political expression, narrative shaping, and testimony. When the talks were in their infancy there was a desire to engage with the ICC on the basis that it might have the potential to help the LRA/M tell their side of the story. In January 2007, Vincent Otti told reporters,

'what I want to assure the world is that the Museveni government indicted the LRA leadership and some of its top commanders. We were indicted without being questioned. We were not even investigated. That is why we decided to at least first of all send some of our delegates to go and find it properly from the Hague and from the court prosecutor to explain to them or we would like the

¹⁰⁸ 'Uganda rebel deputy admits child abductions', APF, 20.09.2006.

¹⁰⁹ <http://www.iccnw.org/?mod=newsdetail&news=1926> (accessed 03.07.2012).

¹¹⁰ 'ICC indictments against rebels should stay, says President' Irin News, 20.09.2006

¹¹¹ 'Kony rebels refuse to sign a peace deal', 10.10.06, <http://humanrightshouse.org/Articles/7527.html> (accessed 02.04.2012).

¹¹¹ In his interview with Mareike Schomerus, for example, Joseph Kony, mistakes the International Criminal Court for the International Court of Justice, while LRA spokesperson Obonyo Olweny refers to the ICC as a UN agency in his opening speech at the JPT; News reports reveal that Otti and Kony both assume the ICC has the death penalty. See footnotes 112 and 113 below.

prosecutor to send his staff to come here and hear from us whether we have really committed crimes'.¹¹²

Thirdly, was the realisation that this particular Court would never be a neutral arbiter. It was regarded as structurally incapable of delivering a impartial historical record of events, or a fair allocation of guilt and punishment. All three angles were expressed in the answer that Joseph Kony gave to Mareike Schomerus during an interview in June 2006, a month before the beginning of the peace talks. When Schomerus asked him whether he had seen the ICC arrest warrants, he replied:

'We did not see any...but...as I am seeing you cannot hear the word from one side only. You cannot say that Mr Joseph is guilty without hearing anything from (me), then you say that he is guilty. (...) the reason why I say like that, it is better if those people (the ICC), they hear, they come and talk to me as you are now talking (...) then they hear what I am saying and what Museveni is saying. Then (after hearing both sides) they will come with that, that you are bad. But this one, they only hear from Museveni side, from my side they did not hear any things. They did not question me, they did not ask me, they did not interview me about the ICC'.¹¹³

The opening speech of the LRA/M delegation at Juba, delivered by spokesperson Obonyo Olweny, on 14 July 2006, contains a similar argument:

'whereas the LRA-indicted leaders are not afraid to submit themselves to the process ICC..because of its selective justice systems, like most of the UN systems, which favours the strong, we are of the view that the initiative for a negotiated settlement is the best option'.¹¹⁴

Those who argue that Kony and the LRA/M's ultimate aim was to achieve a guarantee of impunity, ignore the fact that the LRA were also opposed to the blanket amnesty put in place by the GoU in 2000. Museveni's July 2006 Amnesty offer was rejected by LRA/M spokesperson Obonyo Olweny, who called the offer 'redundant,' because 'all party's need to negotiate as equal persons'.¹¹⁵ Leader of the LRA/M delegation Martin Ojul noted that:

'the LRA/M' does not agree with the principle of blanket amnesty... we have publicly and openly rejected this as government's ploy to indiscriminately

¹¹² 'LRA rebels to send delegates to the ICC', Voice of America News, 24.01.2007 <http://www.voanews.com/content/a-13-2007-01-24-voa3/351110.html> (accessed 13.04.2012).

¹¹³ Mareike Schomerus, 'A Terrorist is not a person like me': an interview with Joseph Kony', in Allen and Vlassenroot, 'Myth', pp.113-132, p.127

¹¹⁴ 'Speech of the Leader of the LRM/A Peace Delegation on the Occasion of the Opening Ceremony of the Peace Negotiation Between the Government of Uganda and the Lord's Resistance Movement/Army', 14 July 2006, (on file with author).

¹¹⁵ 'Uganda LRA rebels reject amnesty', BBC News, 7.10.2006, <http://news.bbc.co.uk/1/hi/world/africa/5157220.stm>

criminalize all members of the LRA/M and hide its own role in the conflict under the carpet'.¹¹⁶

The unequal political dynamics around the allocation of punishment and pardon were deeply troubling to the LRA/M, and informed a position far more complex and nuanced than a straight forward desire to evade accountability.

Important differences divided the negotiating parties on the justice issue. The GoU wanted to use accountability and reconciliation options – and the ICC in particular – as a bargaining chip throughout the talks, in order to ensure a decisive military surrender of the LRA leadership. The LRA/M's position was arguably more substantive and nuanced: it saw in the law both an expansive opportunity and a perilous threat. Could the presence of the ICC and arguments against its jurisdiction actually provide the discursive space the LRA/M craved, or was the law just another inscrutable and hostile power structure poised to come crashing down on them? For the GoU, debates around the ICC were at times frustrating, but it was always able to maintain control over the political stakes of the justice issue. For the LRA/M, the justice issue was existential: it was not the idea of accountability and reconciliation *per se* that was so troubling, but the power and knowledge asymmetry between the negotiating sides, a replication of the structural dynamics that had led to the conflict in the first place, and which was now foreclosing any opportunity for justice to be, in the eyes of powerful elements in the LRA/M, 'fair'.

Transitional justice conceptions in the making: the shaping of the AAR

It was against this backdrop that the AAR was debated and drafted. The talks had pretty much stalled by the early 2007. It was at this point that Pax Christi Netherlands, now renamed IKV Pax Christi, stepped in and facilitated a controversial series of largely secret 'back-channel' meetings in Mombasa, which took place between 31 March and 6 April. President Museveni had consented to the initiative, and put his half-brother General Salim Saleh in charge of the GoU four-person team. The LRA team consisted of five people, including Martin Ojul, leader of the LRA/M delegation, and LRA/M legal adviser Charles Ayena-Odongo. It was never explicitly stated who in the LRA high command had sanctioned either the team or the meetings but Schomerus argues that it

¹¹⁶ Ojul, 'Africa'.

was quite clear it was Vincent Otti.¹¹⁷ Pax Christi argued that the talks were ‘not intended to replace the Juba process’ but simply to ‘help it along’, in a ‘friendlier’ atmosphere, ‘more conducive to mutual understanding than the prickly climate of Juba’.¹¹⁸ The meetings included a discussion on agenda item 3, which had yet to be negotiated at Juba. Indeed, until that point, according to civil society leader, Michel Otim, discussions on the issue of justice and accountability had been attritional, and ‘tit-for-tat’.¹¹⁹ So it was quite remarkable when, on 11 April 2007, Pax Christi issued a press release announcing that the issues related to accountability and reconciliation had been resolved:

‘The two parties agreed that traditional institutions such as Mato Oput, Culo Kwor, Kayo Cuk etc. should play a prominent role in the reconciliation of war-affected individuals and communities. In addition to these traditional mechanisms and underscoring the unacceptability of impunity for crimes against humanity, alternative justice systems will be put in place that will address accountability and enable victims to seek justice for grievances. To address grievances and historical conflicts at the national level the parties committed themselves to establish special forums. The Government of Uganda has agreed to ask Parliament to enact legislation that recognizes traditional and alternative justice mechanisms as key elements in dealing with accountability for the offences committed during the war. Once the justice systems are effectively in place the Government of Uganda will approach the International Criminal Court regarding the indictments against the four leaders of the LRA’.¹²⁰

The Mombasa text, Pax Christi would later argue, was ‘refreshingly straightforward’.¹²¹ In a nutshell, the GoU team committed itself to pass a law that would make it possible to resort to ‘alternative justice mechanisms’, including ‘traditional reconciliation’.¹²² The LRA/M, meanwhile, committed itself to an acknowledgement of the wrongs it had committed and the ‘unconditional submission’ of its members to processes of accountability and reconciliation.¹²³ A few weeks later, on 21 April, Rugunda lay out the government’s position in light of the Mombasa meetings,

¹¹⁷ Schomerus, ‘Eating’, p.213.

¹¹⁸ Simonse et. al, ‘NGOs’, p.233-4

¹¹⁹ Author interview with Michael Otim, Kampala, 08.05.2012

¹²⁰ Pax Christi NL Press Release, ‘Mombasa Consultations between Government of Uganda and Lord’s Resistance Army may unblock Juba negotiations’, 11 April 2007, http://africadata.no-ip.org/wiki/images/8/81/070411_LRA-Uganda_Mombassa_meeting_press_statement_FP.pdf (accessed 05.07.2013)

¹²¹ Simonse et. al ‘NGOs’, p.235

¹²² *ibid.*

¹²³ *ibid.*

‘our position on the court indictments is that, the government will engage the ICC after a final peace agreement (is reached) and after the LRA have undergone the traditional system of mato oput’.¹²⁴

Back in Juba things were a little less straightforward. The talks officially re-started on 1 June 2007, with some new faces in the LRA delegation, including Dr. James Obita, Santo Okot and David Matsanga. As the talks started up again, the International Crisis Group (ICG) reported that both ‘international influence’ and the Ugandan legal advisers brought in by the GoSS mediation team were ‘instrumental in producing a fuller understanding of the need for robust accountability mechanisms’.¹²⁵ This must have had some impact because when US State Department official James Swan met GoU negotiators in late May he was assured that the Mombasa approach was not the whole story, and that the GoU now had,

‘a new approach on the issues of justice and accountability, which will focus on teaching LRA leaders about their judicial options, rather than focus on traditional reconciliation mechanisms’.¹²⁶

Before discussions on Agenda Item 3 officially began at Juba, the International Center for Transitional Justice (ICTJ) and other civil society organisations arranged a seminar for the two parties to encourage a discussion about the different justice ‘mechanisms’. The idea, according to one of the meeting organisers, was to move away from arguments about who did what and the focus on ‘traditional’ justice as the main solution; towards a more ‘technical understanding’ of the different accountability options open to the parties. ‘After the seminar’, he said, ‘you began to see the points of synergy between the different legal teams’.¹²⁷ This was probably because, for both parties, the stakes were so low. For the LRA/M delegation, anything that provided for an alternative to the ICC was promising. The GoU meanwhile, wanted to keep the ICC on the table as a bargaining chip, but that involved the need for viable alternatives to international prosecution.

The mediations’ legal advisers took a hard-boiled and expedient approach. The general position, said a member of the mediation team, ‘was that nobody wants justice, justice is

¹²⁴ ‘Indictments not on talks agenda, says Rugunda’, *New Vision*, 21.04.2007

¹²⁵ International Crisis Group, *Northern Uganda Peace Process: The need to maintain the momentum*, 14 September 2007, p.4

¹²⁶ 07KAMPALA871 2007-05-22 UNCLASSIFIED.

¹²⁷ Author interview with Michael Otim, Kampala, 08.05.2012.

coercive, it is inconvenient, you have to protect people from justice'.¹²⁸ Interestingly, Barney Afako notes that,

‘if you go back to the text of Juba, you will hardly find the word justice... we never used the term transitional justice, we simply described the kinds of things we could do practically’.¹²⁹

The overwhelming priority now for both negotiating teams was to agree on a national legal solution that would satisfy International Criminal Court standards.¹³⁰ On 13 June, the parties reached a consensus on a set of ‘guiding principles’ on justice and accountability, and agreed that a national legal and institutional framework should be designed to deal with accountability for crimes committed during the conflict.¹³¹ The AAR itself was drafted with relative speed and ease, with ‘not many people in the negotiating room’.¹³² The agreement itself was drafted on the back of an envelope during a Eurostar journey between Paris and London.¹³³ At one point the UN OHCHR expressed a keen desire to play a greater role in AAR discussions, but the mediation team refused. This was not a deliberative process; it was pragmatic, and shaped by a diversionary logic that acknowledged the structural and symbolic power of international criminal justice, but also needed to find ways to contain and circumvent it. Regardless of the absolutely central role that commentators gave to the ‘peace versus justice’ dilemma at Juba, the mediation team advisers note that the AAR discussions,

‘were not serious, they were not what torpedoed the talks...the AAR was signed in a record time of one month and it moved much faster than other Agenda items’.¹³⁴

The LRA/M was reportedly unhappy that not all of the 20 issues it had recommended for the discussion had been addressed, but did not push it, and on 29 June 2007 both parties signed the Agreement on Accountability and Reconciliation.¹³⁵ The agreement itself recommended national trials combined with traditional processes of accountability and reconciliation, and a commission for truth seeking and reparations. The talks were then put on hold for one month to allow the GoU and the LRA to consult with

¹²⁸ Author interview with legal adviser to Juba Process, Kampala, 30.05.2012

¹²⁹ Barney Afako, ‘Experiencing’.

¹³⁰ See Nouwen, ‘Complementarity’, for an analysis of the different interpretations of complementarity in the Ugandan context.

¹³¹ 07KAMPALA1079 2007-07-02 UNCLASSIFIED

¹³² Author interview with legal adviser to Juba Process, 20.05.2012.

¹³³ Author discussion with mediation team member, Kampala, 18.06.2012

¹³⁴ Author interview with Judge Owiny Dollo, Kampala, 08.06.2012.

¹³⁵ *ibid*

populations in northern Uganda before drawing up a final implementing protocol, which became known as the AAR annex.¹³⁶

The AAR was made as broad and shallow as possible in order to keep all options on the table, provide the parties with plenty of room for manoeuvre, and, most importantly, to get some sense of progress on paper. Negotiators had a range of transitional justice ‘mechanisms’ to choose from. From ‘traditional’ justice, to truth-seeking, to criminal prosecution, it was easy enough to draw up a list of potential justice forums that would satisfy everyone, simultaneously demonstrating compliance with international rules without having to make ‘broader domestic normative changes’.¹³⁷ This inventory approach was later ridiculed by Afako, who recalled that at one point people were wandering around asking, ‘so, what is this vetting thing? Shall we have that too?’.¹³⁸ Rugunda meanwhile said revealingly that,

‘on the AAR, we did not restrict ourselves. The principles were accountability, reconciliation, development and peace. We might not use everything that is in the AAR, but that is our political framework’.¹³⁹

The mediation team and its legal advisers were largely reactive in that that they were trying to find room for manoeuvre in the context of the constraints imposed by the ICC warrants. The government, meanwhile, remained quite relaxed about an agreement that it was confident it could control. The AAR was, in essence, a well-crafted decoy and fine tuned piece of trickery. If this was a transitional justice conception at all, it was one informed by the narrow interests of the negotiating parties, a box to be ticked in order to allow the talks to continue.

The LRA/M delegation also was guided by a diversionary logic, but saw additional reputation-enhancing opportunities in discussions around accountability. In an eighteen page position paper submitted to the mediation team to inform the AAR drafting, Ojul was quite candid about ‘the embarrassing situation’ which the parties find themselves in with regards to the justice issue.¹⁴⁰ The LRA/M was also clear about its preference for traditional justice as opposed to formal prosecutions, but rather than a last-gasp attempt to salvage a difficult legal situation, the concept was valorised and linked with notions of

¹³⁶ 07KAMPALA1079 2007-07-02 UNCLASSIFIED

¹³⁷ Subotic, ‘Hijacked’, p.7.

¹³⁸ Afako, ‘Experiencing’.

¹³⁹ Author interview with Hon. Minister Rugunda, Kampala, 04.05.2012

¹⁴⁰ Ojul, ‘Africa’.

northern, and more specifically, Acholi identity and exceptionalism. Representatives recognised the potential for this to create useful linkages between the delegation and the broader northern population, opening up a new front for the LRA/M and a means to capture some moral capital, both at home and abroad. The approach was to indigenize or ‘africanise’ the justice issue, while at the same time framing traditional justice in the language of international criminal justice, and putting ‘Acholi’ processes forward as a potentially replicable and exportable universal solution to the current bind. Ojul, for example, highlighted the unprecedented nature of the complicated legal situation, and the extent to which anything agreed at Juba might be path-breaking, particularly in its ability to shape a new approach to the relationship between international and traditional methods of justice after conflict:

‘The truth of the matter is that this is a new area of international jurisprudence. As such what we are doing is likely to be subjected to the curious scrutiny of not only the ICC but also of international jurists. We are laden with the task of setting up an international legal precedent’.¹⁴¹

The LRA/M delegation in particular was said to have insisted that its preferred process, ‘traditional justice’, was framed in a judicialised language in the AAR, in order to make it acceptable as an ‘alternative’ to both ICC proceedings under the framework of complementarity, and to domestic prosecutions.¹⁴² ‘Language’ said one legal adviser, was very important to LRA/M delegates. After Mombasa, he argued, they really ‘needed’ reassurance about language, reassurance that traditional processes could be made to sound credible internationally.¹⁴³ Indeed, Pax Christi noted wistfully, that the text agreed in Mombasa on accountability and reconciliation appears ‘very roughly hewn in contrast to the legal finesse of its Juba counterpart signed on 29 June 2007’.¹⁴⁴ It seems, however, that the inclusion of a more legalistic language was largely cosmetic, and did not represent a substantial normative or policy shift.

Structural disassociation at Juba

¹⁴¹ Ojul, ‘Africa’.

¹⁴² Nouwen, ‘Complementarity’, p.1135. The AAR for example uses the words ‘full accountability’ to describe the traditional justice rituals it lists.

¹⁴³ Author interview with senior legal advisor, Kampala, 19.06.2012.

¹⁴⁴ Simonse et. al, ‘NGOs’, p.235.

As stipulated in the AAR, between 20 August and 27 September 2007 the GoU's Ministry of Internal Affairs and the Amnesty Commission carried out consultation meetings across Uganda in order to 'hear the voices of the people' on issues of justice and reconciliation. There was also a big meeting in Kampala with legal experts about how to implement the AAR. Both processes were to inform an implementing protocol or 'annex' to the AAR. The consultations had a total budget of around \$400,000 and were largely funded by USAID, Netherlands, Norway and Sweden.¹⁴⁵ As the government's popular consultations proceeded, US Secretary of State Jendayi Frazer had a meeting with President Museveni. The President described Juba as a 'circus,' and 'his own Government's parallel track as part of the foolery, and lamented that fools have a lot of audiences.'¹⁴⁶ Two days later, on 8 September, President Museveni and DRC President Kabila signed an agreement in Arusha, Tanzania, that established a 90-day timetable after which Congo would take action against the LRA in Garamba National Park, so providing a new deadline of 31 January 2008 for a final peace deal to be reached. The LRA/M meanwhile was slowly moving forward in organizing its own popular consultation proposal. It called for 500 delegates to travel to the LRA Ri-kwangba assembly, and asked donors for \$2.1million, later revised to \$1.8 million, to fund the expedition. The proposal included a meeting between Kony and northern Ugandan leaders, and later a meeting of experts to help the LRA draw up implementing protocols for Agenda Items 2 and 3.¹⁴⁷

LRA/M consultations eventually began in Gulu on 6 November. This was against the backdrop of the defection of LRA Operations Chief Opio Makasi, who arrived in Kampala on 1 November (the same day as the LRA negotiating team), to a great fanfare of publicity and heavy press coverage. According to the US embassy,

'the two simultaneous arrivals present a dilemma for the Government's military and civilian camps: supporting the LRA delegation's consultations while at the same time wanting to exploit Makasi's defection to encourage others'.¹⁴⁸

The LRA/M consultations were dominated by the uncertainty at this stage about the death of LRA second in command Vincent Otti. African observers who travelled with the LRA/M delegation said that the team had 'virtually no way of communicating with

¹⁴⁵ 07KAMPALA1351 2007-08-24 UNCLASSIFIED.

¹⁴⁶ 07KAMPALA1449 2007-09-14 SECRET.

¹⁴⁷ 07KAMPALA1224 2007-07-27 UNCLASSIFIED.

¹⁴⁸ *ibid*

Kony, who calls them but they cannot call him.’¹⁴⁹ Vincent Otti’s murder and the internal confusion within the LRA/M delegation, caused in part by speculation about growing links between some individual members and the NRM, created an open goal for the GoU. Reflecting on his experiences travelling to Garamba during the three year peace process, the Madi paramount chief, Ronald Iya, notes that ‘what I saw from my time with the LRA commanders was that the late Vincent Otti was the force behind the peace talks’.¹⁵⁰ There was plenty of speculation as to why Otti was killed, but did the fact that he was the ‘force’ behind the peace talks mean that Kony was opposed to them? Iya argues that it was not as straightforward as that, but

‘he acknowledged that he felt under a lot of pressure from Otti. Why is Otti pushing me with this? Why do these negotiations have to be so fast? Peace negotiations can take 30 years’.¹⁵¹

In early January the LRA/M delegation travelled to Ri-Kwangba to present Kony with the findings of the November-December popular consultations on justice and accountability. The team waited several days to see Kony, but they were met instead by senior commander, Caesar Acellam, who said that Kony had ‘another engagement’.¹⁵² Just days after the delegation returned from the Bush, Ojul was dismissed as Chair, purportedly over his growing links with the NRM and his involvement in the Mombasa meetings.¹⁵³ But despite internal chaos and confusion in the LRA/M ranks, the period from the end of January to the beginning of March 2008 were, superficially at least, some of the most productive of the entire Juba process. Talks resumed on 30 January and the next six weeks or so witnessed developments at breakneck speed.

The broad conclusion from both the GoU and LRA popular consultations, perhaps unsurprisingly because it is so logical, was that generally people wanted to ‘use a combination of traditional systems and the formal legal system to achieve accountability and reconciliation’.¹⁵⁴ The AAR agreement, on paper at least, seemed to incorporate these demands. On 19 February 2008 the parties signed an annex to the AAR which described the ‘implementing mechanisms’ that would be put in place. This included the setting up of a ‘special division of the High Court of Uganda...to try individuals who are

¹⁴⁹ 07 KAMPALA1743 2007-11-09 CONFIDENTIAL; Author interview with technical adviser to consultations, Kampala, 23.05.2012

¹⁵⁰ Ronald Iya, ‘Encountering Kony’ in Allen and Vlassenroot, ‘Myths’, pp.177-184, p.179

¹⁵¹ Author field notes, Adjumani, 04.09.2012

¹⁵² Schomerus, ‘Eating’, p.212

¹⁵³ Author interview with civil society leader, Kampala, 09.04.2012; see also, Schomerus, ‘Eating’, p.212.

¹⁵⁴ 07 KAMPALA1435 2007-09-12 UNCLASSIFIED

alleged to have committed serious crimes during the conflict’, as well as a ‘national truth-telling process’, instructions for the setting up of a ‘reparations scheme,’ and a more defined role for ‘traditional mechanisms’. The annex also outlined a commitment by the GoU to approach the UNSC and request that the ICC, ‘defer all investigations and prosecutions against the leaders of the LRA’.¹⁵⁵ On 23 February a permanent ceasefire was signed, and a week later LRA/M delegates, now headed by Dr. James Obita, travelled to Ri-Kwangba to show Kony the final texts. The following day, the final two documents, the agreement on DDR, and its implementation protocol, were signed by the delegations in Juba.

Throughout the talks, but particularly after Otti’s death in late 2007, the GoU and the LRA/M delegations had an approach at Juba that was structurally dissociative. In both cases there were a group of individuals responsible for the day-to-day functioning of the talks (when they were not in hiatus), who entered into negotiations, drew up agreements and signed documents, purposefully detached, for a myriad reasons, from the entirety of their contexts. On the GoU side, agenda items were signed in the knowledge that State House was busily preparing a military offensive. On the LRA/M side, the same agreements were signed in the knowledge that the LRA high command in the bush were the ultimate guarantors of any agreement, but were not being adequately consulted. It is not clear what either delegation did with this ‘knowledge’ at Juba, but it was certainly ‘disassociated’ from deliberations, and compartmentalized throughout the process. This perhaps explains why the agreements were drawn up in bursts, and why progress often seemed notable, and why some people even referred to the ‘spirit of Juba’.¹⁵⁶

This dissociation became particularly severe in the LRA/M team in 2008. Any form of justice, whether ‘traditional’, domestic or international, remained worrying to the LRA high command, regardless of what had been formally agreed. Despite this, after the signing the two final documents in late February, both parties settled upon 9 April 2008 as the date to sign the Final Peace Agreement (FPA). One hundred and fifty people, including chief negotiator Riek Machar, journalists, UN workers, Acholi elders and local village chiefs, assembled in a make-shift camp in Nabanga to witness the signing

¹⁵⁵ AAR Annex, clause 7; clause 37.

¹⁵⁶ Numerous interviewees referred to the ‘spirit of Juba’.

ceremony.¹⁵⁷ But after five long days, Kony did not come. On 18 April, Kony demanded a meeting with Ugandan leaders to discuss the implications of AAR and its annex. On 22 April, Obita told a US embassy staff member that Kony needs,

‘“an explanation of why he should face three forms of justice: mato oput; Special Division of the High Court; and the International Criminal Court” and that “Kony’s questions illustrate his lack of understanding of the agreement”’.¹⁵⁸

In response, Rugunda agreed to a meeting of legal experts in Kampala from 6-8 May, funded by the Netherlands Embassy, to clarify issues relating to the Special Division of the High Court and other requirements. Obita and other LRA delegates were due to attend before travelling, with northern elders and religious and traditional leaders, to Rikwangba, to report back to Kony.

At the Kampala meeting Obita stated the urgent need to,

‘explain to the High Command all of their concerns on issues of accountability and reconciliation, and henceforth to reassure them that the Agreement in Juba is a good one... this workshop will provide the clarity we need to take to the field. Proceedings in the workshop as well as the final document should be as simple as possible, in layman’s language’.¹⁵⁹

What is clear from the workshop report is that the AAR and its annex raised a number of highly complex legal issues, jettisoning Barney Afako’s wish that ‘by the end, everyone should be able to give an outline of accountability in simple terms’.¹⁶⁰ Nobody could actually explain how the AAR, a chicane agreement that had been swiftly drafted to keep the talks going, was actually going to work in practice. Each side dealt with this growing realization in a different way. For the broad northern Ugandan constituency at the workshop, including the LRA/M delegation but also local leaders and civil society, this was a palpably exigent and deeply consequential point. The Acholi paramount chief pleaded for ‘simple interpretations...which will instill confidence in him (Kony) to sign the agreement’.¹⁶¹ In contrast, the GoU’s language became increasingly detached and

¹⁵⁷ ‘Nabanga Nights. They were long, and without Joseph Kony’, <http://ugandascarlettliion.blogspot.co.uk/2008/04/nabanga-nights-they-were-long-and.html?m=1> (accessed 20.05.2012).

¹⁵⁸ 08KAMPALA555 22-04-2008 UNCLASSIFIED.

¹⁵⁹ Workshop on Accountability and Reconciliation in Uganda: Juba Peace Talks, 6-7th May 2008, Kampala, Workshop Report, (on file with author).

¹⁶⁰ *ibid.*

¹⁶¹ *ibid.*

programmatic, emphasizing the ‘mechanisms and procedures’ to be put in place to implement the agreements.¹⁶²

The GoU ‘technical’ approach made political sense at this stage. As a delegation they appeared calmer and more composed, as if the gradual internal combustion of the LRA/M was now inevitable, and in any case they had a solid military plan ‘B’ now in place with both the US and the DRC on board. All the GoU needed to do was keep up the appearance of constructive engagement until LRA/M procrastination and failed deadlines became insufferable to everyone involved. One US cable noted that ‘for its part, the GOU appears mostly content to allow the LRA to work out its internal problems while it encourages LRA defections’.¹⁶³ At this stage the domestic, political, and diplomatic momentum was behind the GoU, and they knew it. People in northern Uganda had started returning from the camps, and their priorities were changing. The hardening of the LRA’s position in late 2007 and throughout 2008 and a spike in abductions, was now seen as far more of a threat to peace than the GoU’s apparent desire to conclude a deal. Northern opposition politicians could no longer credibly base their messages and campaigns solely on the bad intentions of Museveni. The GoU were well aware of this, and the delegation’s deputy leader, Oryem, noted that the GoU would ‘go ahead and play its role...which would contrast starkly with the LRA’s bad faith’.¹⁶⁴

Returning ‘justice’ at Juba to it’s rightful place

The structural and systemic issues to be tackled at Juba were far more extensive and complicated than the ICC arrest warrants, yet the warrants came to symbolise the intractability of existing power asymmetries in Uganda. Ayena Charles, the LRA legal adviser for a large part of the process, recalls that Kony raised the ICC issue regularly and persistently:

‘Kony would say, it does not matter what we agree to do so long as I will be hanged at the ICC...he put a strong condition that no way can he support peace talks unless the ICC is dropped’.¹⁶⁵

¹⁶² Workshop Report, (on file with author)

¹⁶³ 07KAMPALA1894 2007-12-16 CONFIDENTIAL

¹⁶⁴ 08KAMPALA284 2008-02-15 SECRET

¹⁶⁵ Author interview with Hon. Ayena Charles MP, Kampala, 12.06.12

On 25 May on one of the occasions when Kony refused to sign the final agreement with the GoU, he reportedly said, 'I would rather die in the bush than go to the ICC and be hanged'.¹⁶⁶ Taken out of context it is an oft-quoted summation of the intractability of the ICC issue at Juba. But it was not necessarily the ICC *per se* that was so troubling, it was what it came to represent. The court and its warrants became short hand for two sentiments. The first was the fear of retribution and non-acceptance generally. Interviews with people who visited Kony suggest that even in the absence of the ICC warrants, issues relating to personal safety against the backdrop of such serious wrongdoing were paramount in his calculations. At a meeting of community leaders in July 2007, just a month after the AAR had been signed, district leader Norbert Mao described how, despite the Amnesty Law and the rhetoric amongst religious and traditional leaders about forgiveness and reconciliation, many of Kony's relatives had been murdered in Odek in revenge attacks. Michael Otim argued that Joseph Kony felt that he:

'could never secure a favourable deal because of the level of atrocity that had been committed. He realized he could never really return to the community after the pain that he had caused...Kony was faced with several dilemma's, my own reading was that he had a paranoia; a feeling that he knows he has committed so much that no form of forgiveness could ever come genuinely so the peace talks must be some sort of trap'.¹⁶⁷

Ayena Odong came to a similar conclusion:

'from his body language, he was too scared because he was aware of what he had done and could not believe he would be forgiven. Of course ICC gave him even greater impetus not to sign. ICC, it was just an excuse but I wish he had been denied that excuse'.¹⁶⁸

The second sentiment that the court came to represent was an overwhelming feeling that any political 'opportunity structure' that may have existed at the beginning of the talks had, certainly by the first rejection of the FPA, been closed. As the talks progressed and trust in the process waned it became increasingly clear that the LRA/M was incapable of overcoming the communication and narrative blocks imposed by existing domestic and international power dynamics. Kony may have been afraid of how people might react to him but it was also the case that, as Owiny-Dollo puts it, 'he never believed he would be

¹⁶⁶ Atkinson, 'Realists', p.220

¹⁶⁷ Author interview with Michael Otim, Uganda Director, International Center for Transitional Justice, Gulu, 08.05.2012

¹⁶⁸ Author interview with Hon. Ayena Odong MP, Kampala, 12.06.12

given a fair trial'.¹⁶⁹ The concept of legal neutrality seemed to exist as a theoretical possibility in the minds of the LRA/M, but it could never be translated to the political context that they found themselves in with any confidence. The ICC came to embody this barrier. The court, an inscrutable international organization, linked inextricably to the NRM in the minds of the LRA/M and much of the northern Ugandan population, carried with it an apparent power to shape narratives and allocate blame and punishment. It represented, in extreme form, the spectre of absolute silencing and total renunciation.

Amongst the LRA/M delegation the same words and phrases kept coming up in relation to Kony and the high command: the need to reassure them that the agreement is 'well-intentioned', that the peace talks are 'not a trap'.¹⁷⁰ The LRA/M delegation was enthusiastic about the prospects of 'traditional justice,' but it is not clear that the high command, particularly Kony himself, had confidence in local accountability alternatives. He knew little about the rituals that were being proposed, and had never heard of *Mato Oput*.¹⁷¹ Indeed despite LRA/M signatures on both the AAR and its annex, Kony himself was never party to decisions or clear about the implications of what was being agreed. Ronald Iya recounts that at the final meeting of northern Ugandan leaders and LRA/M delegates in Garamba on 28 November 2008, Kony:

'did not know all the details in the signed agreements and that he wanted speak directly with Museveni. He accused his delegation of being thieves and said that his commanders felt the agreement did not give them much'.¹⁷²

In a US cable concerning the same meeting, Rugunda described Kony as 'living in a fools paradise'. The cable goes on to describe how:

'accounts of the encounter reveal that Kony and his senior officers are living in a reality shaped by isolation and misinformation about the outside world... In one instance, Kony railed against Martin Ojul...and said he could not accept the Protocol on Accountability and Reconciliation, which is at the heart of the FPA and which had been negotiated by Ojul. He stated that he could not accept an agreement negotiated by thieves who stole donor money and were being paid by the GoU'.¹⁷³

¹⁶⁹ Author interview with Judge Owiny Dollo, Kampala, 08.06.2012

¹⁷⁰ Workshop Report (on file with author)

¹⁷¹ *ibid.*

¹⁷² 08KAMPALA 1579 2008-12-10 CONFIDENTIAL

¹⁷³ 08KAMPALA1579 2008-12-10 CONFIDENTIAL

Ayena Charles, who had been present at the Mombasa meetings, later complained that the AAR and annex were not a true representation of the LRA/M position as he had understood it:

‘to a great extent they missed out on our original idea for the Agenda item 3. We wanted traditional tribunals or committees that would sit to hear between communities and agree how to conduct hearings...The AAR veered off the regional pathway that I was proposing’.¹⁷⁴

He later said that the LRA/M never actually signed the AAR annex, which is confusing, because they did.¹⁷⁵ He left the LRA/M delegation in February 2008 in unclear circumstances, so perhaps what he meant was that he never endorsed the signature. But as an indication of the lack of communication, incoherence, and structural disassociation that marked the Juba process, and particularly the shaping of the AAR and its annex, his understanding of events seem very apt.

Conclusion

In sum then, justice at Juba was far more complex than abstracted peace-versus-justice portraits suggest. The ICC did play an important role in the talks, but mainly in that it channeled contention and became a symbol against which issues of concern were mediated and articulated.¹⁷⁶ In the end, the AAR and its annex displayed almost the entire range of transitional justice processes that had been developed and endorsed throughout the 1990s. Perhaps not surprisingly, the agreements represented a pragmatic and self-interested compromise: a maze of protective possibilities and narrative shaping opportunities, and a way of moving on from the frustrating constraints imposed by the ICC. Both sides could ultimately agree on the importance of these objectives. For donors and activists, the agreements were seen in a different light: as a game-changing commitment to the transitional justice during peace talks.

But outside of the Juba role-play, Museveni was planning his military Plan B, and Kony was increasingly distant from his delegation and concerned about self-preservation. The AAR and its annex were the product of the structurally dissociative approach by both parties. At points of hyperactivity during the three year process agreements were reached

¹⁷⁴ Author interview with Hon. Ayenda Odong, Kampala, 12.06.12

¹⁷⁵ *ibid.*

¹⁷⁶ Nettlefield, ‘Courting’, p.26.

and signed, but their procedural and substantive aspects masked the highly complex dynamics at play, and represented a simulation of what a set of agreements perhaps, *might*, or *should*, look like, if the conditions were right. Nevertheless, even when the talks completely spun of their axis in December 2008, the AAR agreements as a blueprint for transitional justice still existed, and the government, as part of its ‘good guy’ act, had announced its commitment to implementation. The reality is that for the GoU the AAR agreements largely became an irrelevance after Juba, but, as shall be explored in the next chapter, it was an irrelevance that donors wanted to invest in.

5. ‘Somehow this whole process became so artificial’: Donor and GoU approaches to transitional justice post-Juba

The AAR agreements presented a veritable shopping list of transitional justice processes but when it came to policy design and implementation things became a lot more complicated. The agreements highlighted serious policy dilemmas. Firstly, it was not clear under which applicable law the special division of the High Court would try suspects and the future of the 2000 Amnesty Act needed consideration. Secondly, there was no detail on how formal and informal processes might work together, and the precise nature of a truth body and a reparations scheme were left wide open. As standalone policy frameworks, the AAR agreements were ambitious. Full and meaningful implementation would require not only far-reaching institutional reform but also a profound re-imagining of the relationship between the executive, legislature, judiciary and military; and the relationship between war-affected citizens and state authorities. As discussed in the last chapter, this was not the spirit in which the AAR was drafted or signed. In the absence of a political transition there was very little impetus amongst entrenched political elites for serious engagement with AAR implementation.

As a result, transitional justice in Uganda quickly became a donor-driven affair. This chapter explores the position of the major donors funding transitional justice policy post-Juba¹ and the political tactics that the GoU adopted in response. The first section of this chapter provides context for understanding donor engagement in Uganda and outlines the financial support provided for transitional justice policy. The second section describes how donor support for transitional justice was incorporated into governance and rule of law programming, part of a broader international trend that was explored in Chapter 2. It goes on to interrogate how ‘post-political’, technocratic approaches to transitional justice policy and programming operated in practice, with a particular focus on the perspective of donors engaged in the process. The remainder of the chapter looks in detail at how donor technocratic approaches to transitional justice have interacted with GoU political tactics and strategies. In particular it examines how the GoU has managed through various means, including calculated indifference, political

¹ ‘Post-Juba’ here refers to the period after the signing of the AAR Annex in February 2008.

opportunism and damage limitation, to dismiss, circumvent or instrumentalise efforts to implement the provisions of the AAR. The focus in this chapter will be on reparations, truth-telling and traditional justice. The next chapter will examine in detail the trajectory of criminal justice processes through an examination of the Ugandan war crimes court and the trial of Thomas Kwoyelo.

Setting the Scene: Donor engagement in Uganda

Uganda was one of the first sub-Saharan African countries to adopt liberalization and pro-market policies during the 1990s, and it was handsomely supported and rewarded for this effort. Donor involvement in Uganda nearly doubled between 1989 and 1994, and has risen steadily since.² In 2012, \$1.65 billion of foreign aid was received.³ Uganda's largest donor is the United States, which gave \$396 million between 2011-12, followed by the World Bank and the EU institutions, which gave \$188 million and \$160 million respectively.⁴ In 2011/12 it was estimated that aid accounted for 19% of the annual national budget.⁵ The majority of aid is directed towards 'social infrastructure and services', state sector reforms such as privatization, civil service retrenchment, public expenditure reform, decentralization, and more recently, efforts to rehabilitate the north of the country.⁶

The last three years have seen high-level corruption scandals, the passing into law of controversial legislation including the Public Order Management Bill (POMB) and the Anti-Homosexuality Act (AHA), as well as patchy progress in economic growth. These have tarnished Uganda's image as a World Bank 'development model' and 'star performer'.⁷ Nevertheless, Uganda is still regarded as a state that maintains serious commitment to socio-economic development.⁸ Rhetoric from outsiders about Uganda as an international success story may have been tempered, but overall donor involvement in the country has not changed significantly. Ali Marie Tripp convincingly describes

² Aili Marie Tripp, *Museveni's Uganda: Paradoxes of Power in a Hybrid Regime*, (London: Lynne Rienner Publishers, 2010), p.186.

³ <http://www.oecd.org/countries/uganda/UGA.JPG>

⁴ Kerry Smith, *Uganda: Resources for Crisis Response, vulnerability and poverty eradication*, (Global Humanitarian Assistance: November 2012), p.17.

⁵ *ibid.*

⁶ Tripp, 'Paradoxes'; Smith, 'Uganda' p.9.

⁷ Tripp, 'Paradoxes', p.185.

⁸ <http://www.worldbank.org/en/country/uganda>

modern Uganda as a semi-authoritarian regime, adept at seducing donors with the language of democratization, decentralization, military reform, and conflict resolution.⁹ It maintains a particular hold over the West because it provides foreign policy cooperation in an area of major geo-political and strategic significance.¹⁰ The importance attached to this is particularly clear in the case of the United States, which, in March 2014, rather clumsily announced a significant increase in military aid to Uganda to assist in the effort to ‘hunt’ for Joseph Kony on the very same day that a review of US aid policy was initiated in response to Uganda’s draconian Anti-Homosexuality Bill passing into law.¹¹

Since 2000 there have been a few occasions when donors have threatened to, or actually withdrawn aid, from the Ugandan state, because of corruption, human rights violations, and the deteriorating situation in the north, but this has usually been re-programmed through other donor modalities.¹² An important recent example, whose implications are yet to be fully realized, was the decision by both the Netherlands and Denmark to withdraw aid from the state’s Justice Law and Order Sector (JLOS) following the passing of the AHA. In February 2014 the Netherlands announced that it would be suspending its \$9.5 million annual fund for JLOS, while Denmark announced a ‘restructuring’ of development assistance, directing roughly \$8.3million of aid away from support to the Ugandan Government and towards civil society and activities within the private sector.¹³ These sums represent a small proportion of Uganda’s total ODA but a significant proportion of support for JLOS, which has been tasked with devising and implementing a transitional justice policy. Most notably, the Netherlands in 2012/3 funded roughly half of the entire sector-wide approach (SWaP) budget, and under the 2012-16 JLOS Strategic Investment Plan this contribution was projected annually until 2016. Less quantifiable at this stage is the short and medium term impact of the withdrawal of Denmark and the Netherlands from the sector. Having been major SWaP donors

⁹ Tripp, ‘Paradoxes’; see also, Golooba-Mutebi, Frederick (2004), ‘Reassessing Popular Participation in Uganda’, *Public Administration and Development* 24:4 (2004), pp.289-304.

¹⁰ Tripp, ‘Paradoxes’; Andrew Mwenda, ‘Personalising Power in Uganda’, *Journal of Democracy*, 18:3 (2007), pp.23-37.

¹¹ ‘US foreign policy and Ugandan domestic politics collide’, <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/04/07/u-s-foreign-policy-and-ugandan-domestic-politics-collide/> (accessed 30.04.2014).

¹² For examples see Booth et. al ‘East African’, p.68; Tripp, ‘Paradoxes’, pp.181-93.

¹³ Norway also announced that it was to ‘hold back’ NOR 50K million of aid to Uganda in response to the AHA. This does not impact directly on justice sector support, because Norway made a separate decision in 2012 to reduce its funding in this area and re-allocate it elsewhere.

pushing for active JLOS engagement in transitional justice, it remains to be seen whether institutional priorities will change in their absence. At the time of writing it is unclear how the funds provided by Netherlands and Denmark will be replaced, if at all.¹⁴

In short then, funding and support for transitional justice activities under the auspices of JLOS is currently in flux. What follows is an account of how that support was framed and delivered in the recent past, during the period between the signing of the AAR implementing protocol in 2008 and the decision by key justice sector donors in February 2014 to suspend funding to JLOS. An analysis of the donor approach towards TJ will shed light on the trajectory of state-level transitional justice initiatives. The context provided above is important because support for transitional justice slotted into a pre-existing relationship between donors and the Ugandan state based on cooperation and socio-economic support, and rarely on sensitive political aid or disputes.

Funding and structures for transitional justice policy development, post-Juba

Not long after the annex to the AAR was signed in February 2008, the Ugandan cabinet, in a clever public relations exercise aimed at convincing the international community of its commitment to the Juba process, instructed JLOS to begin planning implementation. A fifty member Transitional Justice Working Group (TJWG) was set up under the chairmanship of the then Principal Judge, Justice Ogoola, of the High Court. The working group existed under the auspices of JLOS and its members were made up of JLOS officials. At this time a Final Peace Agreement remained elusive, but the TJWG did not concern itself with ‘political’ matters.¹⁵ Technical staff involved in the TJWG saw it as the policy making body charged with taking the AAR forward, regardless of whether Kony signed a final agreement.¹⁶ Not long after its inception the TJWG was divided into five ‘sub-committees’, each responsible for a facet of the AAR: (i) court/legal mechanisms; (ii) traditional justice mechanisms; (iii) truth telling body; (iv)

¹⁴ At an EU-Africa Summit on 2 April 2014, the 28 members of the EU agreed that cutting aid to Uganda over the AHA was not necessarily the best way forward and that ‘other options should be explored’, particularly as Museveni is a ‘strategic security ally’. See, ‘Aid cut over gays law unhelpful’, *Daily Monitor*, 10.04.14 <http://www.monitor.co.ug/News/National/Aid-cut-over-gays-law-unhelpful---EU/-/688334/2272844/-/qgxjf2/-/index.html> (accessed 20.04.14).

¹⁵ Sarah Nouwen quotes Ogoola as saying that whether or not Kony signed the FPA was a ‘political question’ that ‘lawyers should stay clear of’, see Nouwen, ‘Complementarity’, p.180; See also, James Ogoola, ‘Lawfare: Where Justice Meets Peace’, *Case Reserve Journal of International Law*, 43 (2010), pp.181-88.

¹⁶ Author interview with JLOS official, Kampala, 30.04.2012.

budget/finance; (v) harmonization between instruments.¹⁷ The first four groups were supposed to work simultaneously and come up with draft policies for each area. It was later decided that public consultations should take place, and sub-committees two and three were combined for this purpose.¹⁸ The ‘court/legal mechanisms’ sub-committee got off to a quick start, and almost immediately began examining the legal and administrative issues around the setting up of a special ‘war crimes’ division of the High Court. The ‘War Crimes Court’ was launched by administrative decree in July 2008 and the dynamics behind the setting up of the court and its first war crimes trial are explored Chapter 6. It was not until nearly five years later, in May 2013 that JLOS presented a draft Transitional Justice Policy addressing the other AAR provisions. It claimed to be an ‘over-arching framework...designed to address justice, accountability and reconciliation needs of post conflict Uganda’.¹⁹ These claims are explored in more detail below.

Donor funding for transitional justice has been allocated through the JLOS SWaP fund, a sector budget support mechanism championed by donors as a way of increasing domestic coordination on justice issues and at the same time improving aid effectiveness. Essentially a basket fund, it appealed to donors as a ‘compromise between pure budget support and the desire for tracking and auditing funds’.²⁰ Donors have set up complementary structures, including a JLOS Development Partners Group, which provides a forum for all donors who provide support to the sector.²¹ As well as funding through SWaP, donors also provide off-budget project support to JLOS. At the time of research, the JLOS Development Partners Group (DPG) was co-chaired by Denmark and Ireland and also included Austria, Germany, the Netherlands, Norway, and Sweden. It also had a number of multilateral members, including UNDP, OHCHR, UNICEF, ICRC, UNWOMEN, and UNFPA. At the time of writing Denmark and the Netherlands were co-chairing the JLOS DPG.²² Across the broad range of JLOS activities, each development partner has a ‘focal’ point. Denmark and Ireland were

¹⁷ Author interview with JLOS advisor, Kampala, 03.05.12.

¹⁸ Author interview with ULRC senior official, Kampala, 24.4.12.

¹⁹ Justice Law and Order Sector, *National Transitional Justice Policy*, Prepared by the National Transitional Justice Working Group (3rd DRAFT, May, 2013) (on file with author).

²⁰ ‘Harmonising Donor Practices’, *OECD DAC Guidelines and Reference Series* (2003)p.40; Author interview with donor official, Kampala, 22.05.2012; The SWaP budget is separate from the entire JLOS budget for each institution.

²¹ Rachel Odoi-Musoke and Sarah Callaghan, ‘The experience of Justice Sector Reform in Uganda’, *Paper Delivered at IDLO Conference*, (n.d) (on file with author).

²² See, <http://www.jlos.go.ug/index.php/2012-09-25-13-11-16/development-partners> (accessed 01.07.2013). Both DFID and the EC participate in the Development Partners Group as non-contributing members.

responsible for the 'TJ focal group' from the outset, and this group continues to meet when the need arises.²³ It should be noted that as 'donors' are referred to throughout the rest of this thesis, it is justice sector donors that make up the JLOS DPG that are being referred to, unless specifically stated otherwise.

Initial donor funding for transitional justice activities were all provided 'off-budget' because the JLOS Strategic Investment Plan II, which covered the period 2006-2011, was introduced before the AAR agreements had been signed at Juba.²⁴ The JLOS Strategic Investment Plan III (SIP III), which runs during 2012-16, lists transitional justice as a 'key thematic area'.²⁵ The SWaP budget for the 2012/13 was roughly \$19.3 million dollars.²⁶ The GoU and the Netherlands contributed roughly \$9.7million each, while Denmark provided around \$71,000 to fund the appointment of an International Technical Advisor (ITA) for transitional justice.²⁷ The day-to-day running of the International Crimes Division of the High Court of Uganda is supported by a different budget line, but SWaP funding does include technical support to the ICD. Other justice sector donors that make up the Development Partner's Group (DPG) still prefer to fund transitional justice activities off-budget.²⁸

Linked to transitional justice objectives but not explicitly framed as such, is the government's Peace, Recovery and Development Plan for Northern Uganda (PRDP), which started in July 2009 and is programmed to run until June 2015.²⁹ The first 3-year phase of the PRDP came to an end in June 2012. 'PRDP II' commenced in July 2012. This programme is administered by the Office of the Prime Minister (OPM), and its overall goal is to 'stabilise Northern Uganda and lay a firm foundation for recovery and development'.³⁰ Its four strategic objectives are (i) consolidation of state authority in northern Uganda, (ii) the re-building and 'empowering' of communities, (iii) the

²³ UNOCHR is now also a 'focal' group partner.

²⁴ Justice Law and Order Sector (JLOS), *The Second JLOS Strategic Investment Plan (SIP II)*, 2006/7-2010/11.

²⁵ Justice Law and Order Sector (JLOS), *The Third JLOS Strategic Investment Plan (SIP III)*, 2012/13-2016/17.

²⁶ Justice, Law and Order Sector (JLOS), *Annual Performance Report 2012/13* (2013) (on file with author), p.81

²⁷ *ibid*

²⁸ For example, Norway funded the Ugandan Law Reform Commission to carry out its study 'Traditional Justice, Truth Telling and National Reconciliation' (July 2012) which was supposed to inform the drafting of the national TJ policy.

²⁹ The first 3 year phase of the PRPD came to an end in June 2012, 'PRPD II' commenced in July 2012 and is due to run until June 2015.

³⁰ Republic of Uganda, Office of the Prime Minister (OPM), *Peace, Recovery and Development Plan for Northern Uganda, (PRPD), Phase 2, July 2012-June 2015* (2012) (on file with author), p.2.

‘revitalisation’ of the economy and, finally, (iv) peace-building and reconciliation. This latter objective, known as ‘SO.4’, was, during PRPD I, a way of channeling funds to the Amnesty Commission, to support the amnesty process and reintegration of ex-combatants, although this only accounted for 0.4% of the entire PRPD budget.³¹ It was not until the Democratic Governance Facility (DGF), a donor basket fund set up in July 2011, began promoting links between the OPM and JLOS, that the two institutions began discussing overlapping transitional justice areas. Even now, that co-ordination remains weak and fundamental tensions exist between the institutions over the future role of the Amnesty.³² In the ‘PRPD II’, reintegration and resettlement of ex-combatants remained a priority, alongside a new focus on community dispute resolution and reconciliation, involving ‘enhancing the roles of community level mechanisms, taking into account how traditional and formal mechanisms interact’.³³ SO.4 was to make up roughly 3% of the PRPD II budget. Support to the Amnesty Commission continued to be provided ‘on-budget’ and all other activities were to be funded off-budget, by donors, and sub-contracted to NGOs working on related issues.³⁴ This has not come to pass however, because the OPM was hit by a major corruption scandal in late 2012 and donor support for the PRPD II has since been frozen or re-directed.³⁵

Donor approaches to transitional justice in Uganda

In order to understand how transitional justice fared at state level in Uganda since 2008, it is important to consider not only how much money has been spent, but also the identity and the approach of the donors spending it. For reasons of relative socio-economic progress and foreign policy cooperation alluded to above, aid to Uganda from US and European donors tends to be described in terms of ‘technocratic assistance’ that partners with government rather than challenging it.³⁶ This is certainly true in relation to support for the justice sector, where donors shy away from issues that are politically

³¹ Ibid.

³² Author interview with DGF official, Kampala, 31.05.2012; Author interview with donor official, Kampala, 05.06.2012.

³³ Ibid, p. iii; Office of the Prime Minister, *Mid Term Review of the Peace, Recovery and Development Plan (PRPD) for Northern Uganda* (2011) (on file with author), p.11.

³⁴ Ibid; Author private email communication with OPM official, 07.08.2012.

³⁵ See, for example, ‘Donors cut all direct aid to government until 2013’, Daily Monitor, <http://www.monitor.co.ug/News/National/Donors-cut-all-direct-aid-government-until-2015/-/688334/1635792/-/tc4u1pz/-/index.html> 04.12.2012 (accessed 06.12.2012).

³⁶ Thomas Carothers, ‘Democracy Assistance: Political vs. Developmental?’, *Journal of Democracy*, 20:1 (2009), pp.5-19.

sensitive, such as the overall balance of power in the country, and the independence of the judiciary.³⁷ Certainly, donors provide support to politically engaged civil society groups, including those working on human rights and democracy issues, but there is rarely much of a direct kickback when these groups and their activities are sidelined or under threat.³⁸ Although donor support for transitional justice has been framed in an expansive and normative language that emphasises its role in ‘promoting the enjoyment of sustainable peace and reconciliation,’ and ‘deepening democracy’ this remained fairly abstract.³⁹ In reality, donors have been far more comfortable talking in terms of what Thomas Carothers and Diane De Gramont call ‘circumscribed institutional improvements’, which focus, for example, on administrative coherence, capacity building, and service delivery.⁴⁰ Support for the International Crimes Division of the High Court for example, is oblique, and aimed primarily at building the capacity of the judiciary, which, it is believed, will strengthen the rule of law.⁴¹ Chapter 2 explored the genesis of this approach towards transitional justice a ‘neutral technology’, below it is examined in more detail in the Ugandan context.

In Uganda, transitional justice has been enveloped into the broader peace-building and development objectives of donors and linked specifically to rule of law strengthening. Its trajectory has, in turn, been determined by the logic of these approaches, which are, in the words of Carothers, ‘developmental’ rather than ‘political’. The developmental approach conceives of change as ‘slow and iterative’ and thus favours aid that:

‘pursues incremental, long-term change in a wide range of political and socioeconomic sectors, frequently emphasizing governance and the building of a well-functioning state’.⁴²

Such an approach is in contrast to ‘political’ interventions which direct aid at ‘core political processes and institutions, especially elections, political parties and...often at

³⁷ Carothers and De Gramont, ‘Development’, p.114

³⁸ See footnote 12

³⁹ Speech delivered by Irish Ambassador Ann Webster during the JLOS Consensus Building Workshop on the draft Transitional Justice Policy, 21 May 2013, <http://um.dk/en/~media/UM/Englishsite/Documents/Danida/Activities/Strategic/Human%20rights%20and%20democracy/Human%20rights/Justice%20Sector%20Reform%20final%20print.ashx> (accessed 30.06.2013).

⁴⁰ Carothers and De Gramont, ‘Development’, p.114

⁴¹ Richard Youngs, ‘Trends in Democracy Assistance: What has Europe Been Doing’, *Journal of Democracy*, 19:2 (2008) p.160-169; See SIP III, pp.29-30 (output 80 and 81).

⁴² Carothers, ‘Democracy’, p.5; For a more detailed analysis of the two approaches, including the advantages and disadvantages of each, see Carothers, ‘Democracy’ and Youngs ‘Trends’.

important conjunctural moments and with the hope of catalytic effects'.⁴³ An example might be USAID's aid to Serbia and Belarus in the 1990s, and more recently, its funding for training political opposition parties in Zimbabwe. Carothers and De Gramont identify a general pattern which indicates that the better the overall relationship with a state, the more likely it is that the approach will be developmental. Conversely, a negative relationship will encourage a more directly political response.⁴⁴

In Uganda, the governance, human rights and peace-building programmes that TJ has been subsumed under, are also informed by a particular idea of democracy, which Richard Youngs identifies as 'democracy as process', rather than 'democracy as product'.⁴⁵ European donors, he argues, tend to favour the former and are less concerned about pivotal political moments such as elections, or direct engagement with forms of political competition. Democracy 'as process' presents political reform objectives as part of broader, longer-term developmental agendas which also embrace social and economic 'modernisation'.⁴⁶ As Youngs argues:

'it is the broad direction of change in developing societies that is presented as the crucial criterion of assessment.... anodyne process-oriented aims are usually pronounced: the 'transformation' of particular sectors; 'political modernisation'; the 'rule of law' and 'pluralistic civil society'.⁴⁷

In scholarship, the distinction between 'process' and 'product,' 'political' and 'developmental,' tends to fall along geographical lines, with the US being associated with 'political and product' based approaches, and European donors with 'process and developmental approaches'.⁴⁸ This categorization is not strictly exclusive, and in Uganda donors have generally been politically non-confrontational, technical and 'governance' focused.

In Uganda, the two donors responsible for chairing the TJ focal group, Denmark and Ireland, both incorporate transitional justice into their broader 'governance' development programming. Danish support for JLOS resides in its Uganda Good Governance Programme, which emphasizes 'democratic development, peace-building, provision of

⁴³ Carothers, 'Democracy', p.5.

⁴⁴ De Gramont and Carothers, 'Development', p.114; Carothers, 'Democracy', p.14

⁴⁵ Richard Youngs 'Democracy as Product versus Democracy as Process', in Mareike Van Doorn and Roel von Meijenfeldt (eds), *Democracy: Europe's Core Value?* (The Hague: Eburon Delft, 2007).

⁴⁶ Youngs, 'Trends'.

⁴⁷ Youngs, 'Democracy', pp.67-8.

⁴⁸ Carothers, 'Democracy', p.12-18.

justice, human rights, accountability and better service delivery.⁴⁹ Specific objectives for JLOS, including ‘improving efficiency and effectiveness’ of the judiciary, ‘supporting reforms in the High Court’ and ‘development of performance enhancement mechanisms’.⁵⁰ Ireland, meanwhile, emphasizes ‘access to justice for poor and vulnerable people’ as a key part of its governance agenda.⁵¹ Capacity building is emphasised by both and defined narrowly, (as it is in most developing country contexts), as engaging with bureaucratic skills development around budgeting and programming and the strengthening of institutional systems (JLOS and the judiciary), through assistance with policy formulation, financial management, legal training and technical resources.⁵² A central plank in the donor approach towards transitional justice in Uganda has also been the recruitment of expatriate experts and consultants to guide the process.⁵³ Expressed as technocratic governance reforms, these objectives fit well with theories about ‘developmental’ and ‘process-based’ approaches to democratization and democracy assistance. At the UN, the OHCHR takes the lead on transitional justice, and is supported by other UN agencies, most notably UN Women, under their ‘access to justice’ programme. The core work of the UN in this area is described as organizing meetings and starting up conversations; ‘we create space for advocacy around an issue’, one UN official said.⁵⁴ Such technical support then expands into other areas, for example by assisting JLOS to develop the procedures of the International Crimes Division.

Perhaps not surprisingly, the JLOS Strategic Investment Plan III 2012-6, drafted with donor supervision, incorporates this language of technical governance reform, stating that a future transitional justice policy in Uganda will aim to:

‘enhance access to justice and basic services for victims in Uganda’s conflict-affected areas (...) and to contribute to the strengthening of the rule of law across the country...this will require the adoption of a relevant policy and legal

⁴⁹ Danida, *Uganda Good Governance Programme, 2011-16* (2011).

⁵⁰ IrishAid, *Country Strategy Paper, 2010-14*, (2010); Embassy of the Kingdom of the Netherlands, *Multi-annual Strategic Plan 2012-14 in Uganda* (2012).

⁵¹ IrishAid, ‘Country’, p.9.

⁵² Ibid; Danida, ‘Uganda’;

⁵³ As well as the International Technical Advisor on Transitional Justice at JLOS, Norway funded external consultants to help the Uganda Law Reform Commission draft its study on traditional justice and truth telling (see ft) and USAID funded the Public International Law and Policy Group (PILGP) staff to draft the legislation necessary to establish the War Crimes Court (discussed in more detail in the following chapter).

⁵⁴ Author interview with UN official, Kampala, 04.10.2012.

framework accompanied by institution building and strengthening to give effect to respective policies and laws.⁵⁵

The assessment by donor partners of progress made so far in the area of transitional justice uses language that is similarly rationalist and neutral in tone. In a public speech, in 2012, for example, the Dutch Ambassador, explained that the ‘bumpy road so far’ in progress on transitional justice related to delays in ‘witness protection policy’ and the need for more attention to be paid to ‘firm and proactive outreach’.⁵⁶ This ‘elephant in the room’ type of analysis is both cautious and incremental. But this is not surprising in the context of a donor approach that prefers to stress the concept of partnership, even with problematic regimes, and that shies away from direct political confrontation, even when the process that is being advocated and funded by donors has deeply political connotations. The squaring of this circle is explained well by Zoe Marriage’s application of psychological theory to aid agency behavior. She notes that the presence of conflicting information or attitudes, termed ‘cognitive dissonance’, is difficult to process and deal with, and that ‘when dissonance is present, in addition to trying to reduce it, the person will actively avoid situations and information which would likely increase the dissonance.’⁵⁷ As will be explored below, this has provided the GoU with useful room for manoeuvre and chicanery when it comes to transitional justice policy discussions.

What is striking about this approach towards transitional justice – one that evades direct political dialogue and focuses on ‘technical fixes’ - is that it represents a significant ontological shift from earlier approaches. As was argued in Chapter 2, the transition paradigm laid the intellectual framework for the concept of transitional justice when it first emerged in the 1980s and 1990s.⁵⁸ Rejecting the analysis of modernization theorists such as K.K Rostow, who focused attention on the structural socioeconomic conditions required for evolution from oligarchy to democracy; the transition theorists focused on the ‘rapid fall and replacement of authoritarian regimes’,

‘They define(d) transition quite broadly as the interval between one political regime and another. Yet they emphasise(d) one particular path for transitions, one that is neither violent nor revolutionary but proceeds through negotiation between the outgoing authoritarian regime and its democratic opposition, and

⁵⁵ JLOS, ‘SIP III’, p.11

⁵⁶ Speech by Judith Mass, Chair JLOS DPG, Embassy of the Kingdom of the Netherlands, to the 17th Joint GoU-DP Justice, Law and Order Sector Review, Imperial Hotel, Kampala, 27.09.2012 (on file with author).

⁵⁷ Zoe Marriage, *Not Breaking the Rules Not Playing the Game: International Assistance to Countries at War* (London: Hurst, 2006), pp.204-205.

⁵⁸ Ibid.

often relies upon formal or informal pacts or agreements that provide security guarantees to both sides'.⁵⁹

The key argument was that transactional political choices were central to the realisation of democracy, and that these choices would be made by elites during bargaining around political outcomes, in the form of elite pacts. In other words, change was located in the domain of political competition and deliberation during a specific transition period. The influence on early transitional justice scholars and practitioners was clear and as the field emerged, its recommendations were specific and fell under Carothers's 'political approach' category, or Young's 'product' approach. The need to 'settle past accounts' using a 'distinct' set of measures: prosecutions, truth-telling, restitution or reparation, and reform of abusive state institutions⁶⁰ would advance democracy and the requirement for *political bargaining* was absolutely central to this realisation.⁶¹

In Uganda the same justice tools derived from this intellectual project have been promoted by donors. This is despite a radically different operating environment and different ontological assumptions about how change happens. The phenomenon that donors envisage is externally driven and part of a long and open-ended *process* of legal-institutional reform and behavioral normative shifts. The agency and choice of political elites is sidelined and transitional justice is promoted as a 'neutral technology' and placed outside of the domain of domestic political bargaining. In particular, it is attached to technocratic concepts of the rule of law and human rights promotion. The assumption has been that these are mutually re-enforcing with the consequence that form 'becomes secondary to generalized and politicized notions of good'.⁶² As will be explored in more detail below, in Uganda, donors see transitional justice more as an evolving process towards liberalising political change than a product in itself. Here, as a self-sustaining narrative, it re-binds itself to original ideas that shaped the field. Transitional justice has always conflated formalist and substantive rule of law concepts with teleological understandings of change, assuming that one will flow from another.⁶³ Stromseth, Wippman and Brooks have cautioned against this approach, arguing that:

⁵⁹ Rostow, 'Stages'; Larry Diamond, Francis Fukuyama, Donald Horowitz, and Marc Plattner, 'Reconsidering the Transition Paradigm', *Journal of Democracy*, 25:1 (2014), pp.86-100, p.87

⁶⁰ Arthur, 'Transitions', p.325; 352-354.

⁶¹ This was the position of the three papers commissioned for the 1988 Aspen Institute Conference written, respectively, by Herz, Zalaquett, Malamud-Goti, see Arthur, 'Transitions', p.350; 353-5.

⁶² McAuliffe, 'Transitional', p.49.

⁶³ *ibid.*

‘assuming that substance will naturally flow from form – or that a normative commitment to substantive values (such as respect for individual or minority rights, a commitment to non-violent means of resolving disputes etc.) will naturally flow from structurally independent courts and from newly drafted legislation that highlights those values...’

is simplistic.⁶⁴ Despite this, in Uganda such an approach is clearly present and it allows transitional justice to be promoted as part of a broader package of governance reforms, in a context where the state appears to be ‘de-democratizing’, i.e. transitioning more towards authoritarianism than towards democracy, because the institutional and political elites that inhabit the state, and their political interests, are not the key unit of analysis.

Inside and outside of politics: contrasting donor and GoU approaches to transitional justice

Donor anti-politics

An opinion widely shared, and expressed by one JLOS official, was that ‘donors are essential for transitional justice to move forward’.⁶⁵ As described above, the main role of donors since the AAR was signed in 2007 has been to fund and provide technical assistance for ‘holistic’ transitional justice policy development in Uganda. What follows is an account of the general approach guiding mid-level justice-sector donor actors who engaged, on a regular basis, with AAR implementation from 2008-13. This section includes an analytical overview of the political approach of the GoU to AAR implementation in the same time period, in order to highlight major dissonances between the two. The final section of this chapter explores the specific domestic political trajectory of three AAR processes to date: truth-telling, reparations and traditional justice.

Perhaps the clearest illustration of the asymmetry between donor and broader JLOS interest in transitional justice was the fact that the first and second drafts of the third JLOS Strategic Investment Plan (2012-2016) did not include *anything* on transitional justice. One donor official explained that the immediate response from donors was to ask: ‘where is TJ in this? And after that,’ she continued, ‘you see them really

⁶⁴ Jane Stromseth, David Wippman and Rosa Brooks, *Can Right Make Rights? Building the Rule of Law after Military Interventions* (Cambridge: Cambridge University Press, 2006), p.73

⁶⁵ Author interview with JLOS advisor, Kampala, 03.05.12; Author interview with donor official, Kampala, 05.06.2012. The argument that TJ is ‘donor-driven’ was made by every donor and JLOS official interviewed during fieldwork.

incorporating things’.⁶⁶ In a revealing formulation of the ‘partnership’ dynamic, another donor official explained that:

‘with SIP III, we said you need to have TJ there to indicate you see it as a need [...] the engagement we reached with JLOS is: we will support you within your SIP III framework, so bring transitional justice in.’⁶⁷

A UN official described the transitional justice content in the final SIP III as a ‘cut and paste from various donor manuals’.⁶⁸ In August 2011, donors funded two transitional justice ‘technical’ advisors to join the JLOS secretariat because of a concern that ‘there was no-one to actually move TJ forward from the inside’: one, an expatriate, was to provide ‘international’ expertise, and the other was to focus on ‘national’ dimensions.⁶⁹ The advisors were funded by donors but employed by the Ministries and their role was to work with the Ugandan government institutions but also to provide a point of contact with donor officials.⁷⁰

Developments in Uganda over the last few years, including the violent crackdown on the post-election Walk to Work protests in 2011, the installation of serving army officer General Nyakairima as Minister of Internal Affairs in contravention of the constitution, and the passing of draconian legislation which violates freedom of association and human rights, such as the POMB and the AHA, all point towards what Charles Tilly describes as a ‘net movement toward narrower, more unequal, less protected, and less binding consultation’.⁷¹ When donors were asked why they invest in TJ in such sub-optimal circumstances in a country that is, to use Tilly’s phrase, ‘de-democratising’, there was acknowledgement that political context is not sufficiently considered.⁷² A senior JLOS official recognised that this was a ‘good question,’ but was unwilling to reflect on it, suggesting that it be put to donors instead. When pushed, she acknowledged that she had ‘never had that discussion’ about political context with donors. At a follow up meeting a few months later, the question was put to her again:

⁶⁶ Author interview with donor official, Kampala, 30.04.2012.

⁶⁷ Author interview with donor official, Kampala, 30.04.2012.

⁶⁸ Author interview with UN official, Kampala, 02.09.2013.

⁶⁹ *ibid.*

⁷⁰ Author interview with donor official, Kampala, 22.05.2012; The International Technical Adviser position was not renewed in 2013.

⁷¹ Charles Tilly, *Democracy* (New York: Cambridge University Press, 2007), p.13-14. For an analysis of this process in the Ugandan context see for example, Tripp, ‘Paradoxes’; Mwenda, ‘Personalising’ and Helen Epstein, ‘Uganda: The General Challenges the Dictator’, *New York Review of Books*, 24 April 2014.

⁷² Tilly, ‘Democracy’.

‘taking a step back is not something I have done...it pops up here and there in JLOS as an issue but in the CSO space, people are more free to ask those kinds of questions. At the political level there is denial about TJ. At the technical level there is a realization that this needs to be addressed but there is not enough critical analysis of context’.⁷³

A UN official agreed that:

‘donors are not having a conversation about the goals and strategies of TJ and that is a great failure (...) Using TJ strategically for serious constitutional and structural reform: then you are using TJ well. But the checklist approach is dangerous. TJ could end up doing more damage’.⁷⁴

When asked about the prospect of the 2013 draft Transitional Justice Policy (discussed in more detail below) making it into law, one donor official, responded:

‘Will Cabinet approve it? That is a good question. Accountability is a difficult issue. Yeah, I don’t know enough about the political environment’.⁷⁵

It was not only donors who were failing to engage with the political context. One former senior NGO staff member, who had himself coordinated civil society programmes on transitional justice, lamented the approach of NGOs, which had, in his view, been:

‘ticking all the boxes... truth, prosecution, national audits... we just bang it all together and that is not useful, none it is grounded on concrete data’.⁷⁶

Where a rationale for funding transitional justice was expressed amongst donors it was framed in one of two ways. The first was the argument that Uganda, compared to other countries in the region, is redeemable under the right tutelage. ‘Uganda is not the worst’, said one donor, ‘there is international supervision’.⁷⁷ The second justification emphasised a gradual and incremental opening up of dialogic space on accountability, the implication being that this would cross over into positive reform. As one donor explained:

‘we may not be able to achieve all our goals in the stated time and the way it is envisioned... I still think that in the context we are in, it is worth pursuing just so that we can at least start a conversation...public discussion and dialogue with key stakeholders is a first, initial step’.⁷⁸

⁷³ Author interview with JLOS advisor, Kampala, 18.09.2012.

⁷⁴ Meeting with UN official, Kampala, 04.10.2012.

⁷⁵ Author interview with donor official, Kampala, 03.09.2013.

⁷⁶ Author interview with former NGO official, (by skype), 27.05.12.

⁷⁷ Author interview with donor official, Kampala, 22.05.2012.

⁷⁸ Author interview with donor official, Kampala, 03.05.2012.

The logic, informed by liberal state-building ideas, was that technocratic agents, working through alternative donor funded bureaucracies, would design and deliver TJ processes which would, in turn, build the institutional capacity of the Ugandan justice sector and strengthen the rule of law.⁷⁹ The language employed by donors downplayed the existential political and personal struggles mediated through processes of justice, and played up the degree to which development agencies and local bureaucracies could control these processes. This approach towards AAR implementation appeared to assume a level of institutional independence that has never existed in the Ugandan context.⁸⁰ It did not take sufficient account of what Kim Lane Scheppele calls the ‘interacting parts’ of the legal order.⁸¹ Rule of law and governance indicators that have been central to donor funded transitional justice programming in Uganda were confined to discrete measurements such as the number of judges that had been trained in international criminal jurisprudence.⁸² These could be objectively measured as standalone data in external efforts to strengthen discrete institutions such as JLOS, but said little about the ‘political cultures’ that framed the way in which the people interacted with these institutions.⁸³ The approach of donors also neglected a central moral and practical dilemma, which was whether it was prudent to support a sitting government, whose own security apparatus was implicated in major international crimes against its own citizens, to design and develop its own programme of transitional justice. Indeed, while the political leadership was being written out of the transitional justice equation, it was also, potentially being empowered. Indeed just because donors were reluctant to engage in Ugandan politics, it did not follow that their efforts had no political implications.

According to a JLOS official, donors ‘cut out a lot of steps;’ you cannot, she argued, just meet with *technical* people, ‘with this government, unless you involve the top leadership in the first discussion of a project, then it just does not go anywhere’, because, as she explained, those who design the policy reforms are seldom the ones who either authorize

⁷⁹ Mac Ginty, ‘Routine’, p.290.

⁸⁰ Political and bureaucratic wings of government are largely fused for patronage purposes in Uganda, see for example, Tripp, ‘Paradoxes’, p.75-11; Mwenda, ‘Personalising’; Booth et. al, ‘East’, pp.56-76.

⁸¹ Kim Lane Scheppele, ‘The Rule of Law and the Frankenstate: Why Governance Checklists Do Not Work’, *Governance*, 26:4 (2013), pp.559-562, p.562.

⁸² See JLOS, Annual Performance Report (2012/3), pp.56-7

⁸³ Francis Fukuyama, *The Origins of Political Order: From Prehuman Times to the French Revolution* (New York: Farrar, Straus and Giroux, 2011); Scheppele, ‘Rule’; Gauri et al, ‘Intersubjective’, p.161.

or implement them.⁸⁴ This was a problem with the NGO approach too. According to a staff member, NGOs had failed to get a proper grip on ‘insider stuff’.⁸⁵ He explained that in 2010 his organisation began talking about the need to get a clearer and more nuanced sense of the ‘political terrain’ around transitional justice, including trying to identify who in the political structure needed to be engaged with; but the impetus ‘petered out’.⁸⁶ This was echoed in more immediate terms during a long meeting with a donor staff member, a northern Ugandan, who had moved in and out of the NGO policy and political world for many years. Speaking in confidence and emphasizing the ‘personal’ nature of his ideas, he explained that:

‘On TJ, there is no serious thought from donors or NGOs, no lead transitional justice person has emerged. Look, this is a legacy issue. You need to negotiate with the government around what it is you want to address. And maybe, you need to reach an agreement that at a certain level, no we will not go after them. Museveni – we will not touch you. There is a genuine interest in associated issues – the government wants to build a strong sense of national identity. Patriotism; constitutionalism – there is a national guidance department in the OPM. This is a framework that TJ could feed into, that makes it possible. This is where government interest could lie. It is about where these different agendas can meet. The question has to be, OK, how do you frame an agenda for that conversation? Because how you frame it could tear this country apart’.⁸⁷

What he highlighted were the messy political interactions and compromises that attend these processes, and that a policy that required political compromise and ‘buy-in’, could not proceed at a purely technical level. The need for transitional justice, his quote implied, had not been constructed by advocates as a ‘story that had a chance of surviving’ in the Ugandan political context.⁸⁸ To paraphrase Larry Diamond, if there is one absolute precondition for transitional justice, it is the presence of a set of elites that decide, for whatever reason, that it is in their interests to pursue.⁸⁹ This was expressed through the private and ‘off-record’ comments of many donor staff, who were highly insightful about the inadequacies of the donor approach yet trapped within a system of

⁸⁴ Author interview with JLOS official, Kampala, 03.05.2012; Andrews and Bageteka, ‘Overcoming’, p.24-5.

⁸⁵ Author interview with former NGO official, Kampala, 27.05.12.

⁸⁶ Ibid.

⁸⁷ Author interview with donor official, Kampala, 22.05.2012

⁸⁸ Matt Andrews and Lawrence Bategeka, ‘Overcoming the limits of institutional reform in Uganda’, *Wider Working Paper*, 111 (2013), p.19.

⁸⁹ Diamond et al, ‘Reconsidering’, p.91. Rami Mani presents a four-fold typology of government attitudes towards rule of law reconstruction and transitional justice: willing and able, willing but not able, able but not willing, and not able and not willing. See Rami Mani, *Beyond Retribution – Seeking Justice in the Shadows of War* (Cambridge: Polity Press, 2002), pp.72-3.

institutional constraints and macro-forces that they, as individuals, had little incentive or power to address.

Another problem with failing to engage sufficiently with the domestic political context was that a lack of desired ‘outputs’ (explored below), was explained away too simplistically as being down to a straightforward and homogenous ‘lack of political will,’ without sustained analysis of how or why.⁹⁰ Criticism of the government about the failure of the PRPD’s SO.4 to make any headway during its first phase was indicative of this. A political adviser to the OPM explained that she felt that the government was being ‘wrongly maligned’ by NGOs for inactivity around SO.4 because a proper discussion had never taken place between donors and the Government about the peace-building and reconciliation objectives. She complained that ‘USAID, UN Women, they do not tell us what they are doing, and then they turn around and say, oh well, the government is just not engaged’.⁹¹ This was a problem that a donor staff member acknowledged, noting that the criticism directed at the government over the failure of SO.4 was ‘dishonest’ and ‘did not tell the whole story’.⁹² Lack of progress, she argued, was down to a lack of dialogue and joint strategy between donors, the Government, and NGOs.

GoU political pragmatism and calculated indifference

In light of all this, an important question emerges about the GoU and its own motivation for keeping TJ on the table. From the moment the AAR agreements were signed off, the GoU has rooted its approach firmly in the politics of pragmatism.⁹³ Transitional justice could at once be embraced and circumscribed depending on the political moment. In 2008, GoU support for taking the AAR agreements forward was based on a confidence that any future policy making and implementation could be tightly controlled. In March 2008, Minister of Internal Affairs Rugunda warned the US Ambassador that the implementation of the Agreement would not necessarily ‘follow the letter,’ but that the

⁹⁰ ‘Political will’ is described by a Hambergren as the ‘slipperiest concept in the policy lexicon’, usually identified amorously as something that is ‘lacking’, see Linn Hambergren, *Political Will, Constituency Building, and Public Support in Rule of Law Programs*, (Washington DC: Centre for Democracy and Governance, 1998).

⁹¹ Author interview with OPM official, Kampala, 05.06.2012.

⁹² Author interview with donor official, Kampala, 22.05.2012; Participant observation, PRPD workshop with donors and civil society, 03.06.2012.

⁹³ Mac Ginty, ‘Routine’, p.298.

Government intended to move forward on its obligations.⁹⁴ The Government, from the outset, saw the AAR agreements as a broadly optional framework subject to GoU supervision and discretion.

During Juba, and immediately after the AAR agreements were signed - when debates about international justice and criminal prosecution for war crimes were so intense - there was a feeling that taking transitional justice forward would garner significant international prestige, not to mention donor funds. One Minister explained that it is important to 'dress these justice things up for international credibility'.⁹⁵ The political leadership understood that despite their own indifference or reservation, transitional justice needed to be on the agenda because at the international level it was considered to be the 'right thing to do'.⁹⁶ As one Ugandan legal expert noted, 'it is one of those things that any government should be doing; something that they cannot afford to remove from the agenda'.⁹⁷ The motivation for compliance was cosmetic and status-aspirational. Uganda, argue Andrews and Bategeka is 'best in class' in Africa and even beyond when it comes to accountability organs, the problem is that laws are not being implemented and processes are being 'poorly executed'.⁹⁸ They conclude that one explanation for this is that reforms are 'being introduced to make government look better based on externally defined best practices'.⁹⁹ Transitional justice in Uganda should be understood against this broader context.

Despite the reputational gains on offer, however, transitional justice remained a marginal issue, even within the JLOS sector. This was most clearly demonstrated by the fact that as a policy it remained absent from the first draft of the JLOS strategic plan for 2011-16. Unlike Latin American countries which were transitioning to democracy in the late 80s and early 90s, and unlike Rwanda and South Africa, where addressing the past was so central to both the political formation of a new national identity and the very future of the nation state, transitional justice has never been an existential or deeply consequential political issue for the majority of Ugandans, and the political class understood this.¹⁰⁰

⁹⁴ 08KAMPALA24 2008-03-19

⁹⁵ Author interview with Government Minister, Kampala, 22.05.2012.

⁹⁶ Ibid.

⁹⁷ Author interview with Ugandan legal expert, Kampala, 02.05.2012.

⁹⁸ Andrews and Bategeka, 'Overcoming', p.1.

⁹⁹ *ibid*, p.25

¹⁰⁰ Phil Clark shows, for example, how in Rwanda, where a high stakes transitional 'dilemma' existed after the 1994 genocide, transitional justice policies were the product of intensive domestic political negotiation

The sorts of dilemmas that existed in those contexts, and the requisite political and intellectual engagement connected to them was simply not widespread in Uganda.

In May 2013 JLOS produced a *draft* Transitional Justice Policy for Uganda.¹⁰¹ The first of its kind in an African country, commentators celebrated its publication as a ‘historic step’.¹⁰² At this point, however, the policy exists in a very basic *draft* form only and is largely a re-statement of both the AAR and its annex with very little detail on the specifics of implementation.¹⁰³ Indeed the draft policy recommends the setting up of a Transitional Justice Commission with a ten-year mandate to oversee discussion of enabling legislation. Even if they have had to couch their dissatisfaction in the thinly veiled language of ‘partnership’, donors have been impatient about the lack of political commitment to the draft policy. In May 2013, Anne Webster, the Irish Ambassador emphasised that the Development Partner’s Group had been ‘waiting for the transitional justice policy for the last three to four years’ and that:

‘it would be good if the executive arm of the Government could publicly express commitment to the transitional justice (sic)..., particularly to fully participate in the truth telling processes and reparation, which the citizens are eagerly waiting for’.¹⁰⁴

But while political representatives have been sent to some of the JLOS-TJWG meetings, since 2008, there was rarely any explicit clarity about the political position of the government on the matters being discussed.¹⁰⁵ When asked to whether such clarity might exist in the future, one senior JLOS official lamented, ‘well, that is not so apparent right now, so I cannot say’.¹⁰⁶ Of all the technical JLOS staff interviewed, not one was optimistic about the chances of the policy actually being implemented. NGO staff were also concerned that the policy would not be prioritized, and that the process was more than likely to stall either at Cabinet stage or before-hand.¹⁰⁷

and compromise. Phil Clark, *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda: Justice without Lawyers* (Cambridge: Cambridge University Press, 2011).

¹⁰¹ JLOS Draft TJ Policy (3rd Draft).

¹⁰² ‘Uganda Announces Transitional Justice Policy’, *Beyond the Hague*, 9 August 2013, <http://beyondthehague.com/2013/08/09/the-lapse-of-amnesty-in-uganda-stimulating-accountability-or-prolonging-conflict/#more-65> (accessed August 21 2013)

¹⁰³ Critiques of the policy have largely centered on arguments that it is vague and does not provide sufficient direction about how different processes will work together. See for example, Anne Webster, ‘Speech’; Refugee Law Project, ‘Renewed’.

¹⁰⁴ ‘Revise Amnesty Act – Irish Envoy’, *New Vision*, 23 May 2013 <http://www.newvision.co.ug/news/643088-revise-amnesty-act-irish-envoy.html> (accessed 01.01.14).

¹⁰⁵ This was pointed out by several donors and civil society groups that sit on the JLOS TJWG.

¹⁰⁶ Author interview with JLOS official, Kampala, 03.09.13

¹⁰⁷ Author interviews

Political will is complicated, and there are numerous reasons why the political leadership has not, in practice, shown commitment to the full range of processes listed in the AAR agreements. The first has been a cost-benefit calculation that long-term, intangible ‘justice’ and ‘reconciliation’ activities, would not provide the sort of political capital that might justify government investment beyond vague declaratory support. Take the ‘reconciliation’ objectives in the PRPD for example. Reflecting on the first phase of the PRPD, a senior official in the OPM said that ‘we could only give lip service to SO.4 under PRPD I. It was never going to give us quick wins for re-settlement, and anyway, we lack expertise in this area’.¹⁰⁸ This ‘lack of expertise’ was cited as a reason for subcontracting all reconciliation activities in the second phase of the PRPD to NGOs, which were said to have a comparative advantage in this area. Government officials in the OPM claimed that the government was good at creating ‘hardware;’ it could develop infrastructure such as school and health clinic buildings. It was not, however, so effective at the ‘software’, the training of teachers; the provision of medical supplies and – most pointedly in the case of the PRPD – the necessary requirements for peace-building and reconciliation. In some senses this was a politically convenient self-fulfilling prophecy, and donors complained that the Government should be taking the opportunity to build capacity in this area rather than ‘privatizing’ it.¹⁰⁹ The Government, however, felt no compulsion to address the ‘comparative advantage’ issue, and understood that it had more to gain from investing in those PRPD provisions which resulted in physical buildings, something visible and tangible to generate a sense of progress.¹¹⁰ This was a calculated move quite possibly based on a true reflection of the people’s priorities in the north. In the three population-based surveys conducted by the Human Rights Centre at the University of Berkeley, California, in 2005, 2007 and 2010, respondents listed their priorities as education, health, and basic food security. In one of the surveys, only 3% of respondents listed justice as a priority.¹¹¹

¹⁰⁸ Author interview with OPM/PRPD official, Kampala, 06.06.12

¹⁰⁹ Ibid; Author interview with OPM/PRPD official, Gulu, 12.07.2012.

¹¹⁰ Author interview with OPM/PRPD official, Kampala, 06.06.12; Author interview with Senior OPM/PRPD official, Gulu, 12.07.2012

¹¹¹ See Pham et. al, ‘Forgotten’. One of the main criticisms of the PRPD to date is that schools and hospitals are being built but there are not enough teachers, doctors or medical drugs. See, for example, Jackson Odong and Otim Barnabas, ‘Thrown Along the Way: Community Perspectives on Conflict Drivers in the Implementation of the Peace, Recovery and Development Plan (PRPD) for Northern Uganda’, *Refugee Law Project Working Paper* (Kampala, November 2012), The PRPD also became the focus of a massive OPM linked government corruption scandal, with allegations that officials in the OPM embezzled up to \$13 million of donor funds intended for the PRPD, see ‘Aid cuts threaten vital public

Indeed, across Uganda as a whole, there has been a relatively narrow domestic demand for transitional justice since the AAR agreements were signed, and very little active lobbying from politicians, even those from the affected areas. There has been limited debate, and limited knowledge on the part of parliamentarians, and MPs have rarely organised themselves around issues of transitional justice or reconciliation.¹¹² This has partly been due to parliamentary structures which encourage MPs to organize themselves in regional groups. On occasion the 'northern parliamentary group' has raised these issues, but it remains unlikely, despite the efforts of some NGOs, that transitional justice and reconciliation, as imagined in the AAR agreements, could become a national issue or national priority.¹¹³ One NGO staff member explained that NGOs quite naturally push the donor agenda on this issue, but the Government's perception – often justified – tended to be that little connection existed between NGO demands and the people's priorities.¹¹⁴

As one Uganda Law Reform Commission (ULRC) official explained, donors put pressure on JLOS to stick to their work plans - 'because they have given us all this money' – so deadlines were given and to some extent adhered to, but there was very little correlative domestic political pressure to encourage the government to actually commit to what was being produced.¹¹⁵ Meanwhile, as one UN official explained, work on transitional justice in JLOS is everybody's second job: there may, she argued, 'be commitment in JLOS but that is not where the leadership should be coming from. You cannot have the sector pushing the government'.¹¹⁶ The unofficial State House position, argued one senior presidential advisor, was that transitional justice, and ideas around accountability and reconciliation were 'just palliatives,' and that the real change that people desire will come when the NRM can 'create a Uganda that people can identify with,' noting that 'we need time to do that, it will take generations'.¹¹⁷ His insisted that donors make everything so technical, complicated, and time-pressured, and that having

services', IRIN, 17.12.12. <http://reliefweb.int/report/uganda/aid-cuts-threaten-vital-public-services> (accessed 03.02.2013).

¹¹² Author interviews with civil society organisations working on transitional justice, Kampala, April – June 2012.

¹¹³ Transitional justice was not mentioned in either the 2nd (2012) or the 3rd (2013) Reports of the Joint Acholi Sub-Region Leaders' Meeting, held annually (both on file with author).

¹¹⁴ Author interview with donor official, Kampala, 04.06.2012.

¹¹⁵ Author interview with senior ULRC advisor, Kampala, 24.4.2012.

¹¹⁶ Author interview with UN official, Kampala, 04.10.2012.

¹¹⁷ Author interview with senior presidential advisor, Kampala, 04.05.2012.

to accommodate to their ‘fads’ is part of the game, but not a particularly productive pastime.¹¹⁸ Indifference to transitional justice on the part of the government was not necessarily part of a deliberate strategy. As one donor official noted:

‘in the beginning I thought, they are not mobilizing, meaning they made the decision not to mobilize, but I just don’t think they had even thought about it and made a conscious decision whether they wanted to push this or not. That is my honest opinion. There are just more important issues in the country and the sector’.¹¹⁹

Another reason why transitional justice has received so little political attention is that it did not fit well with the emerging government narrative about war and peace in northern Uganda. Some argued that the lack of real engagement with transitional justice was part of the broader marginalization of the North.¹²⁰ But this argument neglected the fact that the government *was* engaging in the North, however superficially, and that part of this engagement involved the shaping of a particular narrative about the war and its aftermath that touched only fitfully with the broader transitional justice framework. As early as 2007 the government was beginning to talk about how peace-talks and government-sponsored development programmes for the north must be conceptually de-linked. In September 2007, US representatives urged President Museveni to formally launch the PRPD, noting that there now existed an adequate degree of stability for the programme to operate. Museveni’s response was that:

‘he wanted to correct the common misconception that peace in the north was the result of the negotiations. According to Museveni, the current stability was not the result of the peace talks but from Kony being pushed into Congo.’¹²¹

The president did not want anybody thinking that the PRPD was in anyway a concession to LRA/M demands. On the contrary, the fact that the LRA/M had finally been chased out of northern Uganda by the UPDF meant that the GoU could finally provide development support to the area.

This tied into a broader argument that the people in Acholiland, after years of delusion, have finally come to see that President Museveni was only ever trying to end the war and develop the north. Minister Rugunda explained the NRM’s support in the North in the 2011 elections in these terms,

¹¹⁸ *ibid.*

¹¹⁹ Author interview with donor official, Kampala, 05.06.2012.

¹²⁰ Fieldnotes, Kampala, 16.06.2012.

¹²¹ 07KAMPALA1449 2007-09-14 SECRET.

‘it is because there is peace for the first time. People there were being told all the time that it is Museveni causing this war. Now they see they were being told lies. They see the truth now’.¹²²

A senior NRM official expressed a similar view,

‘people like peace and they realized that the LRA rebellion, having supported it, was not delivering anything. They saw that the UPDF was dying for them’.¹²³

Described triumphantly as a Marshall Plan for the North, the PRDP has been framed as something the government has chosen to *give* to the North, having secured peace for its inhabitants, and not something that it *owes* to the North, having overseen a devastating twenty-year war in the region. The distinction is important, because the former implied government *largesse* and generous political concession, while the latter implied some culpability for what happened. As one JLOS official explained, if the government starts talking about reparations then it suggests that ‘we are at fault’.¹²⁴ The political leadership generally seemed to feel that it had done its part in addressing and resolving the conflict, and that it could now move on and focus on different things. The PRDP, and not the AAR agreements, were thus considered to be the main government response for recovery and development in the North.¹²⁵

The domestic political trajectory of truth, reparations and traditional justice

Truth and reparations: damage limitation and political opportunism

As noted by the Irish Ambassador to Uganda, Anne Webster, there has been a particular political reticence over reparations policy and the future of a truth telling body or process.¹²⁶ Both policies exist in the draft Transitional Justice Policy, and were signed up to in the AAR agreements, but since 2008 the oft-repeated line, as expressed by ministers and senior officials, tends to be that reparations would be very difficult to meet, and that the terms of reference of a Truth and Reconciliation Body would be near impossible to agree on.

¹²² Author interview Minister Rugunda, Kampala, 04.05.2012.

¹²³ Author interview with senior NRM official, Kampala, 02.05.2012.

¹²⁴ Author interview with JLOS official, Kampala, 03.05.12.

¹²⁵ ‘Forget the Past – Museveni tells Acholi’, *Uganda Correspondent*, 28 November 2011, <http://www.ugandacorrespondent.com/articles/2011/11/forget-the-past-%E2%80%93-museveni-tells-acholi/> (accessed, 03.04.2011).

¹²⁶ See footnote 103. Webster left this position in August 2013.

The Deputy Attorney General, Frederick Ruhindi, warned publicly in July 2012 that ‘when we think about reparations we need to be very careful about what we can swallow and what we cannot swallow’.¹²⁷ In a private meeting, he elaborated:

‘reparations in terms of money is very difficult to meet. It is not good to have high expectations. Get in, build schools, health facilities that function. That is better than interventions at a household level’.¹²⁸

A senior official in the OPM was similarly circumspect about a reparations policy, but for slightly different reasons. His argument was that talk of reparations and compensation would ‘spark emotions and pain of the people’, and that the only sustainable way to ‘soothe’ the minds of the people would be to ‘empower them through economic revitalisation’.¹²⁹ In April 2014, in response to an advocacy campaign funded in large part by UN Women, Parliament passed a resolution calling for ‘gender sensitive reparations’ for the Acholi region, although it remained unclear how this would be translated into policy. While the Prime Minister gave his support to the resolution, he had earlier requested that the original motion be re-worded so that ‘it acknowledges government interventions in the North’ and counters the ‘wordings’ which ‘portrayed that the government had done absolutely nothing for the North’.¹³⁰

Despite a general political objection to a formal reparations *policy*, reparation and compensation have frequently been promised, and occasionally delivered on an ad hoc basis, to score political points. One donor official noted that politicians are very aware that the issue of reparation and compensation carries some resonance with communities, so, she explained, ‘they talk freely: we will give you this, we will give you that’.¹³¹ Since the peace talks collapsed in 2008, there have been numerous reports of President Museveni offering ad hoc reparation and compensation to populations in northern Uganda during political rallies and campaign speeches.¹³² In northern Uganda the most

¹²⁷ Deputy Attorney General, Minister Frederick Ruhindi Speech to JLOS National Validation Workshop, Grand Imperial Hotel, Kampala, 18.07.2012 (notes on file with author).

¹²⁸ Author interview with Minister Frederick Ruhindi, Kampala, 22.05.2012.

¹²⁹ Author interview with OPM official, Kampala, 06.06.12

¹³⁰ ‘Parliament supports Motion on Reparation of War Affected Women’, *Acholi Times*, 07.04.2014, <http://www.acholitimes.com/index.php/acholi-news/2208-parliament-supports-motion-on-reparation-of-war-affected-women> (accessed 10.04.2014).

¹³¹ Author interview with donor official, Kampala, 30.04.2012

¹³² ‘Atiak Massacre Survivors Ask President Museveni to Fulfill His Pledge’, *Acholi Times*, 29.04.2013, <http://acholitimes.com/index.php/home/archives/8-acholi-news/1386-atiak-massacre-survivors-ask-president-museveni-to-fulfill-his-pledge> (accessed 03.06.2013); ‘Govt gives Acholi War Debt Claimants UGX 5 Billion’, *Uganda Radio Network*, 31.01.2013, <http://ugandaradionetwork.com/a/story.php?s=49396> (accessed 07.06.13); ‘War Claimants lose hope for compensation’, *Daily Monitor*, 23.09.2013,

well known pledge has been the one-off payment of UGX50million (roughly \$20,000) to the Atiak Survivors Group in August 2013. This Group, discussed in more detail in Chapter 8, was formed after a massacre in Atiak village in 1995. Perpetrated by the LRA and allegedly commanded by Vincent Otti, it is estimated that about 300 people were killed during the attack. To date the government has also paid out money to the Acholi War Debt Claimants Association. In 2006 the Claimants took the government to court, demanding compensation for animals that were looted or perished during the insurgency. The following year the government proposed and was granted an out of court settlement, which involved the gradual payment of UGX12.1billion (roughly \$4.6m million) to the claimants.

In both cases, these payments have sparked serious controversy and major tensions within the region. The Acholi War Debt Claimants executive committee has been accused repeatedly of stealing the compensation. The most recent case was in mid-2013, when the association's Chairperson acknowledged that members of the executive committee had squandered a substantial portion of the UGX 5 billion (roughly \$4.9m) given that year.¹³³ These stories are reported in the national and local press, alongside coverage of farmers trekking for miles, spending money on opening bank accounts and then finding that the compensation they are owed is no longer available or is so paltry a sum that it failed to justify the lengths people went to receive it. In Atiak meanwhile, inter-communal tensions broke out between two 'rival' survivor associations, after the August 2013 payment, with each one claiming sole right to Museveni's pledge. This is amid accusations that certain members have been inappropriately dividing the cash payment among themselves.¹³⁴ Evidence from other contexts suggests that these sorts of problems may continue in the absence of a proper reparations policy.¹³⁵ But despite occasional lip service, there is little to suggest that such a policy will emerge.¹³⁶ Ad hoc

<http://www.monitor.co.ug/SpecialReports/War-claimants-lose-hope-for-compensation/-/688342/1964080/-/2b4hs9z/-/index.html> (accessed 06.01.14).

¹³³Ibid. 'War debt claimant faints over cash compensation', *Daily Monitor*, 10.06.2013, (accessed 20.09.2013) <http://www.monitor.co.ug/News/National/War-debt-claimant-faints-over-cash-compensation/-/688334/1877396/-/14030lx/-/index.html>

¹³⁴ 'Bitter Fight Erupts Among Atiak Massacre Survivors Over Museveni Money', *Acholi Times*, 28.10.2013 <http://acholitimes.com/index.php/perspectives/8-acholi-news/1805-bitter-fight-erupts-among-atiak-massacre-survivors-over-museveni-money> (accessed, 30.10.2013),

¹³⁵ Although the evidence base is small, lessons from elsewhere indicate that even in cases where a proper policy is in place, reparations have the potential to create division and animosity at the community and even household level, see Macdonald, 'Local', p.44-45.

¹³⁶ This is not for lack of research about what affected communities would like to see in a reparations policy. See, for example, UN Human Rights, *The Dust Has Not Yet Settled: Victims Views on the Right to*

cash payments that can be linked to election campaigning or other political projects, such as land acquisition, are a more attractive prospect for a President who relies on the monetization of support and leverage.¹³⁷ Meanwhile, the divisive impact of ad hoc reparation plays into the politically convenient stereotype that portrays an innate Acholi tendency toward internal combustion and chaos.

As with reparations, there has quite clearly been no political support at state level for a policy of truth telling or national reconciliation initiatives.¹³⁸ The AAR agreements proposed the establishment of a ‘body’ with a mandate to ‘inquire into the past and related matters’.¹³⁹ According to JLOS-TJWG officials working on the Norway-funded study report on ‘traditional justice, truth-telling and national reconciliation’ between 2009-12, a national truth commission was top of the agenda for certain donors. The ULRC explained that shortly after the Juba talks collapsed, donors were bringing in experts to help JLOS staff design truth commission templates. This was a divisive move amongst JLOS staff, some of whom began to feel that Uganda was being treated like a ‘laboratory for external ideas about transitional justice’.¹⁴⁰ Tensions in this particular area were informed by Uganda’s difficult historical relationship with truth commissions. Indeed the world’s first ever truth commission was held in Uganda under Idi Amin’s military dictatorship. A similar body was set up by President Museveni when he came to power in 1986.¹⁴¹ According to the ULRC, popular consultations revealed that people’s attitudes are shaped, in part, by their historical experience of these bodies:

‘when we talk to people during consultations they are not interested in a truth commission. People are not interested for historical reasons. Those that have been established in Uganda have not been implemented and reports have not been realized. People understand that resources provided for a truth commission will add no value’.¹⁴²

Remedy and Reparation, A Report from the Greater North of Uganda (UN Women, Kampala, 2011), which gathered information from over 2000 victims of the LRA-GoU conflict between 2007-11.

¹³⁷ According to the Ugandan Human Rights Commission, the ‘monetisation’ of the 2011 election was its most marked feature, Author interview, Uganda Human Rights Commission official, 09.05.2012; UHRC, *Uganda 2012 Human Rights Report* (Kampala, 2012); In 2012, the ICC Victim’s Trust Fund was operating eighteen projects in northern Uganda, but as country staff acknowledged during an interview it has ‘very modest resources’ and a ‘very particular mandate: victims and families in affected communities since 2002. If someone cut off your ear in 1998, you are outside the jurisdiction of the TFV’, Author interview, ICC TFV staff, Uganda, Kampala, 06.06.2012.

¹³⁸ To generate discussion the RLP drafted a National Reconciliation Bill in 2009 but it was never formally tabled in parliament. See www.beyondjuba.org

¹³⁹ AAR Clauses 2.2 and 2.3

¹⁴⁰ Author interview with senior ULRC official, Kampala, 24.4.12.

¹⁴¹ See, Quinn, Joanna (2004) ‘Constraints: The Un-Doing of the Ugandan Truth Commission,’ *Human Rights Quarterly*, Vol. 26 No.2, pp. 401-427.

¹⁴² Author interview with ULRC official, Kampala, 24.4.12.

Other JLOS officials were nervous about the patronage opportunities that a big, new donor supported institution in Uganda might offer. 'If the donors go ahead with this,' said one,

'the government would ensure that it is not fruitful. There is no goodwill on the government side for national reconciliation. But, of course, they would take the money... "this thing will not bear fruit" they will say to themselves, "but I will take the money!"'¹⁴³

Beyond the fact that truth commissions have been held in other parts of the continent, and in particular that 'South Africa was brought up', it was not clear what the specific donor rationale was for pushing it in the Ugandan context, although it does relate back to Kritiz's earlier concern that transitional policy:

'often depends less on the well-grounded and often proven policy considerations than on whether the junior member of staff writing the policy memo has some experience with the South African TRC or another transitional justice process'.¹⁴⁴

There was also a clear institutional divide between JLOS and the OPM on the issue of a truth commission. While some JLOS officials appeared open to the idea, yet circumspect, OPM officials were uniformly opposed. One senior PRPD official at the OPM was shocked that the idea had been proposed in the first place, demanding to know, during an interview in 2012:

'how would that work? You think the Government will sit there and talk about its wrongdoing in the North...that just won't happen!'.¹⁴⁵

The feeling amongst OPM officials was that there have been other conflicts in Uganda and people have moved on, and that is how it is expected it will be in the North. The very fact that OPM officials were unaware that the idea of a truth commission was on the table in the first place also shows the lack of communication between the two government institutions tasked with designing and overseeing the implementation of transitional justice related activities in northern Uganda.

The truth commission idea died a quick enough death. One JLOS official summed up its trajectory concisely: 'the development partners group had been pushing it at one stage,

¹⁴³ Author interview with senior ULRC official, Kampala, 24.04.2012; Nouwen also makes reference to donor funds in this area being used as way of extending patronage, see Nouwen, 'Complementarity', p.182.

¹⁴⁴ Author interview with senior ULRC official, Kampala, 24.4.2012; Quoted in McAuliffe, 'Transitional', p.1.

¹⁴⁵ Author interview with senior OPM/PRPD official, Kampala, 05.05.2012.

but it takes politicians out of their comfort zones. If they do not like it, then it stops'.¹⁴⁶ Indeed, the strategy of senior government ministers and officials is either to raise the spectre of the 'truth' as a de-stabilising force, or to circumvent it through bureaucratic obfuscation. At a workshop in Kampala, Chief Justice Odoki expressed concern about simplistic prescriptions for truth commissions in Uganda. 'The truth', he said, 'is a very complex concept, which must be treated with caution. At best it is subjective'.¹⁴⁷ The Deputy Attorney General was quite clear that it would be an impossible political task to achieve consensus on the temporal mandate of any future commission. A senior official at the Ministry of Internal Affairs batted away the issue, instrumentalising a bureaucratic logic which rehearsed the complicated administrative procedures that setting up such an institution would require, emphasizing in particular the length of such a process, and ending with thinly veiled obfuscation: 'because, you have to think, suppose at TRC was set up. How would we finance it?'.¹⁴⁸ It is notable that the draft 2013 Transitional Justice Policy is vague, asserting that 'truth-telling' is crucial to peace-building, but accepting that 'truth-telling' would require 'communal and political acceptance'.¹⁴⁹ More recent donor and NGO efforts in this area have been focused on support for inter-Acholi truth telling and national documentation initiatives.¹⁵⁰

The GoU approach towards both reparations and formalized truth telling illustrates the capacity of the Government to control and manage these processes whilst also circumventing them. Whether through damage limitation, political opportunism, or divisive political tactics, the GoU has successfully diverted donor attempts to establish these processes in law, and to entrench the norms that underpin them.

'Traditional justice' post Juba, GoU platitudes and donor norm promotion

Here we return to perhaps the most talked-about element of the AAR agreements: their stated support for a range of 'traditional justice rituals', which 'reconcile parties formerly in conflict after full accountability' (see annex), to become part of a broader transitional justice strategy.¹⁵¹ As was described in Chapter's 3 and 4, this had an appeal for the GoU

¹⁴⁶ Author interview with donor official, Kampala, 04.06.2012.

¹⁴⁷ Chief Justice Odoki, Opening Speech, JLOS Validation Workshop, 17.07.2012

¹⁴⁸ Author interview with senior official, MOI, Kampala, 12.06.12.

¹⁴⁹ JLOS, 'Transitional Justice Policy (draft)', Paragraph 47.

¹⁵⁰ For example, The National Memory and Peace Documentation Centre, which is a collaborative initiative between the RLP and Kitgum District Local Government.

¹⁵¹ The AAR makes reference, specifically, to different ritual for each group affected by LRA violence: *Mato Oput* (Acholi); *Ailuc* (Iteso); *Tonu ci Koka* (Mado), *Kayo Cuk* (Lango) and *Culo Kwor* (Acholi and Lango).

and donors, but also for many interested parties in northern Uganda. For the GoU, the approach to traditional justice as a post-conflict accountability and reconciliation tool has been largely platitudinous. The narrative has been framed to portray the Acholi as ‘other’, while at the same time locating the causes, consequences and solutions of the twenty-year war within the region itself. In 2012, a senior government Minister stonewalled questions about the implementation of the AAR with the statement that: ‘look, we support *mato oput*, and that has been effective’.¹⁵² The reality is far more complex than that, as will be explored in Chapters 7 and 8.

In July 2013 JLOS produced a compendious Norwegian-funded study on traditional justice processes across Uganda.¹⁵³ One of the key donor and NGO criticisms of the study was that it failed to define clearly the criminal jurisdiction of traditional mechanisms, and their legal relationship with the formal sector.¹⁵⁴ To the consternation of NGOs and donors, this major gap remains in the draft Transitional Justice Policy.¹⁵⁵ After the AAR was signed a sub-committee of the TJWG was set up specifically to consider how all the different TJ processes could link together, but, according to one JLOS official:

‘the group did not appreciate the importance of their job. In the end people just wrote “one pagers” on each of the processes and there was no report on how they might be integrated. So, the policy has zero on linkages. We had no time and were given no extra pay.’¹⁵⁶

Justice sector donors have spoken in public about the need for TJ in Uganda to be ‘holistic’ and ‘integrated,’ yet there is no magic formula for achieving such an outcome. Indeed the question about the relationship between formal and customary law was inherited from the colonial period, and still represents a profound challenge that affects many areas of public and private life in Uganda. The policy of the government on related issues has been to surrender to the legal and political complexity of the issue. Legal experts argue that the formal and the informal will ‘always exist in tension’.¹⁵⁷ A presidential advisor agreed, explaining that both formal and informal justice will continue to exist in Uganda, but in an ‘uncomfortable mixture’.¹⁵⁸ Indeed last year Uganda’s

¹⁵² Author interview with Government Minister, Kampala, 04.05.2012.

¹⁵³ JLOS, *Study on Traditional Justice, Truth-telling and National Reconciliation* (Kampala: July 2012).

¹⁵⁴ Participant observation, JLOS validation workshop, 17.05.2012, (see ft.105).

¹⁵⁵ Author interview with NGO official, Kampala, 03.09.2012; See also Anne Webster speech (ftn.36).

¹⁵⁶ Author interview with NGO official, Kampala, 03.09.2012

¹⁵⁷ Author interview with legal expert, Kampala, 02.05.2012.

¹⁵⁸ Author interview with senior presidential adviser, 04.05.2012

Marriage and Divorce Bill, which would make marital rape illegal, was shelved after public consultations found large scale opposition to the Bill among men, on the basis that it undermined traditional and religious understandings of marriage and property relations.¹⁵⁹ The solutionism of donors who speak in abstract terms about ‘holism’ and ‘inter-linkages’ in transitional justice overlooks the broader jurisdictional tensions around real and perceived public authority in a bifurcated legal system.

The stated desire to ‘harmonise’ the AAR provisions into a package of TJ measures has thus proved elusive so far. Since 2008 though, certain donors have focused their efforts on the KKA, in an attempt to make it, and the traditional justice it promotes, more human rights friendly.¹⁶⁰ Given that the GoU has been disinterested in ‘intra-Acholi’ reconciliation, this has been an area where donors have had significant freedom of maneuver. In May 2013 the Irish Ambassador Anne Webster addressed JLOS with a familiar directive:

‘it is imperative for all of us to reflect broadly on how best traditional justice mechanisms can be strengthened and capacitated to enhance compatibility with human rights principles’.

This sentiment fits with the World Bank’s 2011 recommendation that ‘traditional’ systems be ‘pulled’ in the direction of international norms and values.¹⁶¹ Since 2008 the Ker Kwaro Acholi, as an institution, has become a significant forum for donor experimentation around transitional justice and peace-building. In early discussions about ‘Acholi’ justice, particularly after the setting up of the KKA in 2000 and the passing of the Amnesty Law that same year, NGO reports were published which recommended that the KKA begin documenting and ‘codifying Acholi law’, particular in relation to the ‘*Mato Oput*’ ritual.¹⁶² With the support of Danida a pamphlet called the ‘Law to Declare the Acholi Customary Law’ was produced as early as 2001. Amongst other things, it outlined in a legal format the ‘procedure and other requirements for

¹⁵⁹ Rosie Hore, ‘I don’t: Uganda’s Controversial Marriage and Divorce Bill is Left on the Shelf’, *Think Africa Press*, 19.09.2013 <http://thinkafricapress.com/uganda/i-dont-controversial-marriage-and-divorce-bill-left-shelf> (accessed 05.01.2014).

¹⁶⁰ USAID, Danida, the Democratic Governance Facility (DGF), UNDP and UN Human Rights have all provided funding to the KKA.

¹⁶¹ World Bank, *World Development Report 2011: Conflict Security and Development* (World Bank, Washington DC, 2011), p.167

¹⁶² The *Roco Wat I Acholi* report outlines the ‘urgency of documenting local traditional justice mechanisms’, see Baines, ‘Roco’, p.7.

blood compensation (*Mato Opu*).¹⁶³ Copies of the ‘red book,’ as it is known, are hard to get hold of nowadays, because the KKA has agreed to update the pamphlet in line with human rights standards.¹⁶⁴ A more recent Ker Kwaro Acholi publication entitled ‘Some of the Acholi Cultural Practices’, published with financial support from UN Women, in 2009, highlights two of the core values of the KKA as follows: ‘to uphold respect for Human Rights and dignity’ and ‘developing innovative and inclusive policies’.¹⁶⁵ In 2012, UNHCR was working with the KKA. A KKA programme officer noted that:

‘UNHCR has given us a small grant for a period of six months to create a handbook. We need to explain to the Chiefs what is expected of them on human rights, so that they do not violate human rights’.

When pressed on the reaction of the chiefs to these edicts, the programme officer stated that there would be ‘trainings and sensitisations... the UNHCR is going to help us with capacity building’.¹⁶⁶

The Ker Kwaro Acholi have, as Claire Paine points out, learnt very quickly how to include ‘trigger’ words in project proposals and other materials, ‘adapting needs to the supply on offer,’ and inducing demand rather than creating it.¹⁶⁷ The KKA Strategic Plan 2009-14 contains numerous development buzzwords: ‘rights based approach’; ‘gender mainstreaming’; ‘conflict transformation’; ‘participatory community development’; ‘capacity enhancement’ – the list goes on.¹⁶⁸ In the past the KKA has received funding from USAID, Danida, the Democratic Governance Facility (DGF), UNDP and UN Human Rights, amongst others. There is a political economy behind the alignment of local concerns to the world-view of donors. The reconstruction of forms of Acholi tradition in the image of liberal human rights ideals and donor programmatic language becomes transactional: it provides access to resources, both material and reputational. It is also an aspirational act. The appeal of codification for the KKA, NGOs, and donors, is an attempt to inscribe local processes within what Hannah Skoda calls ‘broader, even

¹⁶³ The red book states that the ‘law shall come into force on 1st January 2002’ but it has never enjoyed any proper legal status under state law. Ker Kwaro Acholi, *Law to Declare The Acholi Customary Law* (2001) (on file with author).

¹⁶⁴ Author interview with programme officer, Ker Kwaro Acholi, Gulu, Margeret Aber, 06.07.2012.

¹⁶⁵ Ker Kwaro Acholi, *Principles and practices of customary tenure in Acholiland*, (2008) (on file with author).

¹⁶⁶ Author interview with programme officer, Ker Kwaro Acholi, Gulu, Margeret Aber, 06.07.2012.

¹⁶⁷ Claire Paine, ‘Imagining Traditional Authorities in Africa: The Case of Ker Kwaro Acholi’ (n.d), <http://www.nai.uu.se/ecas-4/panels/101-120/panel-106/Clare%20Paine%20-%20Abstract.pdf>, p.12

¹⁶⁸ Ker Kwaro Acholi, *The KKA Strategic Plan 2009-14* (2009), on file with author

universal frameworks of civilization and rightful order'.¹⁶⁹ This dynamic is explored in more detail in chapter seven.

This is where the relationship between transitional justice, peace-building, human rights and democracy, becomes very complicated. Donor approaches to *traditional* justice in particular, have been a paragon of what Milja Kurki calls 'depoliticised, instrumental, and technical forms of human rights promotion'.¹⁷⁰ The problem has been that the 'process of recognition and reform,' and the 'pull' towards respect for international norms, remains fundamentally *non-democratic* and *inequitable* because neither has allowed for genuine political contestation. The approach to traditional justice as a transitional justice tool, post-Juba, has made two assumptions. The first has been the 'unanimity' fallacy that *all* Acholi agree on what 'tradition' is and what function it should play in their lives.¹⁷¹ The second has been the belief that the induced appending of human rights and other idealized liberal norms to purportedly traditional structures is in itself a progressive act. The commitment that donors have asked the KKA, and, by proxy its broader constituencies to uphold, required automatic acceptance of the fundamental rights and freedoms that the international community promotes: for example, the rights of minorities and the rights of individuals.¹⁷² There has not been enough space for genuine deliberation around these issues, and too little forensic analysis of how the universalist legalist paradigm might translate into local contexts. Holly Porter, for example, finds that women in Acholiland who have been subject to sexual violence do not benefit from the services offered by the 'people of human rights'.¹⁷³ This was partly because access to those services is limited, but also because relatives and elders were considered to be the 'primary sources of decision making' on response to rape.¹⁷⁴ This is a socially embedded practice. Similarly, at several public dialogues across the Acholi sub-region, men and women expressed doubts about 'this thing of children rights'.¹⁷⁵ One local councilor in Anaka summed up the sentiment in his assertion that a serious impediment in reconciling with the former LRA combatants was the imposition of children's rights - 'rights are fine'

¹⁶⁹ Skoda, 'Historian's', p.41

¹⁷⁰ Milja Kurki, 'Human Rights and Democracy Promotion: reflections on the contestation in, and the politico-economic dynamics of, rights promotion', *Third World Quarterly*, 32:2 (2011), pp.1573-1587.

¹⁷¹ Branch, 'Ethnojustice', p.618.

¹⁷² Kurki, 'Human', p.1585

¹⁷³ Porter, 'After', pp.128-166.

¹⁷⁴ Ibid.

¹⁷⁵ Author participant observation, Acholi sub-region, June 2012-October 2012.

he said ‘but what about responsibilities?’¹⁷⁶ Despite this, human-rights based interventions have been promoted by donors as technical, practical, and apolitical, rather than what they actually are, which is contested, or as Milja Kurki argues, ‘foundational, normative and political’.¹⁷⁷ What was equally concerning was that the donor and NGO logic seemed to be that if popular consultations did not follow the script it was not because the policy was wrong, but because people did not know what was best for them. One particular discussion about the possibilities of post-conflict traditional justice with a donor went as follows:

D: ‘The issue you have in Uganda is that you cannot base something on what people say because these people are not informed and not educated. They don’t think about the other questions that might be linked to what they are saying, like OK, your traditional justice is fine but what about women’s participation?’.

I: ‘When you say ‘people’ who do you mean?’

D: ‘You know, when you go into the villages and do consultations.’¹⁷⁸

A JLOS official expressed concern about the way in which outreach and consultation had been carried out on transitional justice since 2008. ‘What donors and NGOs here call consultations’, she said, ‘you are just consulting people on things they do not understand’.¹⁷⁹ This pointed to a broader trend clear in NGO practice too, which was essentially to neglect or misinterpret the capacities that people already had, and to pay too little attention to existing social practices and the intersubjective meaning that shape them.¹⁸⁰

Conclusion: The political space for inaction

After the collapse of the Juba peace talks, transitional justice was subsumed under the broad donor rubric of governance and peace-building programming. The anthropomorphism of transitional justice into a technical governance intervention has clearly shaped the domestic political trajectory that it has taken. This chapter argued that the donor approach was based on a misjudged determination that transitional justice policy could be negotiated, developed and implemented in the absence of any serious

¹⁷⁶ Participant observation, RLP Public Dialogue, Anaka, Nwoya, 07.07.12.

¹⁷⁷ Kurki, ‘Human’, p.1581

¹⁷⁸ Author interview, donor official, Kampala, 05.06.2012

¹⁷⁹ Author interview, JLOS official, Kampala, Ismene, 03.05.2012

¹⁸⁰ Deborah Eade, ‘Capacity building: who builds capacity’, *Development in Practice*, 17:4 (2007), pp.630-639.

engagement with the political leadership of the state. Such studious avoidance of politics has placed transitional justice, as an idea, in a chimerical and quasi-mythical space between donor intent and GoU non-committal.

The transitional justice conception put forward by donors combined broad-brush objectives related to liberal peace-building and state-building with a managerial approach which emphasized application through technical interventions. In practice, it stood little chance against a politically adept regime intent on shoring up power and maintaining the status quo. This was especially so in the Ugandan context where transitional justice remained a minority domestic concern and was regarded as a specifically ‘northern’ issue. The political leadership has deployed various tactics to circumvent and manage the question of AAR implementation. Where players recognised political capital it was usually linked to easy electoral gains (ad-hoc promises of reparations); or enhanced reputational status (the first domestic war crimes court); or political narrative shaping (traditional justice). Where they recognised a threat (a call for a truth commission), it was easy enough to neutralize. ‘Somehow’, acknowledged one donor, ‘this whole process became so artificial’.¹⁸¹ The following chapter explores dissonant transitional justice conceptions in more detail through an in-depth analysis of the first trial by the International Crimes Division of the High Court of Uganda, that of Thomas Kwoyelo.

¹⁸¹ Author interview with donor official, Kampala, 05.06.2012

6. Anatomy of a trial: Thomas Kwoyelo

Introduction

In July 2008, as Kony's signature on the Final Peace Agreement was still being sought, Principal Judge Ogoola, chairman of the newly-founded JLOS Transitional Justice Working Group, issued an administrative circular.¹ It outlined his plan to set up a new division of the High Court - the 'War Crimes Court' - and highlighted staffing and other administrative arrangements. The AAR agreements envisaged, on paper at least, that any future domestic war crimes court would comprise just one element in a wider matrix of transitional justice. What actually happened was that the court was cherry-picked for support, while progress on other transitional justice requirements, explored in the last chapter, largely stalled. This chapter explores the political dynamics behind the setting up of the court and its first trial, that of former LRA member, Thomas Kwoyelo. Following on from the last chapter, it continues to examine the dissonance that existed between the transitional justice expectations of donors and the messy reality of political machinations in the Ugandan context.

This chapter puts forward three central arguments. The first is that the process of setting up the Court was detached from the Juba talks and this shaped its construction. Engagement at the donor and 'expert' level focused on the 'technical aspects' of applicable law and administrative coherence, primarily by officials who had not been involved in the Juba negotiations.² Second, while the Kwoyelo trial was a political trial, it did not play out in a conventional 'victor's justice' sense because in many instances, President Museveni and other embedded Ugandan elites demonstrated ambivalence both towards the court and its first trial. The whole process, from the initial investigation onwards, was an endoscopic view of the complex legal, institutional and political conflicts between prosecution and amnesty in Uganda. While donors, JLOS institutions, parliamentarians and the UPDF all had an active stake in this conflict, the State's political leadership maintained an equivocal and tenebrous stance which allowed all options to be kept open, whilst undermining justice sector institutions, including the new war crimes

¹ Administrative Circular No.1 of 2008, High Court Divisions and Circuits Staff Deployment.

² Otim and Wierda, 'Uganda', p.3.

court. Third, the broader socio-political role of the trial exceeded its legal outcome³, thus the final part of the chapter explores the way in which the trial was interpreted ‘on the ground’, in Acholiland, including by the local leadership. To date, analysis of the trial from the bottom up has been limited to journalistic and NGO accounts which tend to over-simplify the ‘victim’ perspective as being either ‘for’ or ‘against’ the trial without exploring why this might be the case.⁴ As will be shown, perspectives on the trial shifted depending on whether individuals or communities ‘individuated’ or ‘de-individuated’ Thomas Kwoyelo and his alleged crimes. Meanwhile, local leaders in northern Uganda made calculated decisions about how to present the Kwoyelo trial against the background of broader political narratives about the war.

Setting up the Court

As early as March 2008, immediately after the signing of the AAR annex, Principal Judge James Ogoola began preparations for the setting up of the Special Division of the High Court. In private meetings with US officials he acknowledged that the creation of the Court was a ‘special case’ and required some careful planning.⁵ Senior members of the judiciary have since complained about lack of consultation, and the ‘preferential’ donor treatment provided to the Court. Justice Ogoola, a noted champion of the AAR agreements and promoter of transitional justice in Uganda, was singled out for particular criticism. ‘Setting up that court’, argued one senior lawyer, ‘was not a collective judicial process but a single decision of a judge who wanted to steal the limelight of the Juba Process’.⁶ Apprehension centered on the relationship between transitional justice and the rule of law and related directly to concerns that have been expressed in other contexts, in which ‘post-conflict justice is hived off as a separate and specialized issue’ and the newly built courthouse comes to represent an ‘edifice isolated from ongoing

³ Christiane Wilke, ‘Staging Violence, Staging Identities: Identity Politics in Domestic Prosecutions’, in Paige Arthur (ed.) *Identities in Transition*, (Cambridge: Cambridge University Press, 2011), p.120.

⁴ See for example, ‘Col. Kwoyelo Rearrested Within Minutes of His Release By High Court in Gulu’, *Acholi Times*, 14.11.2011, <http://justiceandreconciliation.com/2011/11/col-kwoyelo-rearrested-within-minutes-of-his-release-by-high-court-in-gulu-acholi-times-14-nov-2011/> (accessed 10.01.12) and Haggi Matsiko, ‘The Kwoyelo Trial: A pre-emptive attack on truth?’, *The Independent*, 22.07.2011, <http://independent.co.ug/news/news-analysis/4418-the-kwoyelo-trial-a-pre-emptive-attack-on-truth> (accessed 10.01.12); See, ‘Public Divided Over Kwoyelo Trial’, *Daily Monitor*, 10.07.2011 <http://www.monitor.co.ug/News/National/-/688334/1197660/-/item/1/-/6n7y9n/-/index.html> (accessed 01.02.2012).

⁵ 08KAMPALA410 2008-03-17 SECRET

⁶ Author interview with Ugandan legal expert, Kampala, 22.05.12; During a meeting with legal experts in Kampala in May 2012, it was explained that the constitutionality of the ICD itself was questionable.

development and perhaps even substituting for real reform'.⁷ Concerns about transparency of the process or viability of the court did little to deter donors. 'We really support that Court', said one donor. Indeed, so much so, that as Sarah Nouwen writes, in mid 2008:

'while parliament was still to decide on the law applicable in any domestic international crimes proceedings, while the fate of the Amnesty Act was still to be determined.... while the Chief Justice was yet to formalize the SDHC⁸ ... the judiciary presented to donors a preliminary budget for a start up phase of the SDHC ... the judiciary did this successfully and donors and international NGOs embraced the WCC'.⁹

Initial donor support came in the form of off-budget 'capacity building' subventions, including funding for needs assessments, training workshops, technical guidance, and study tours for JLOS staff and government ministers to The Hague, Sierra Leone, and Bosnia. Donors also financed the WCC premises and 'radio jingles' celebrating the set-up of the new court.¹⁰

In November 2008 Uganda won the bid to host the first ever Review Conference of the Rome Statute of the ICC, to be held in Kampala between 31 May -11 June 2010. As the date approached, two potentially embarrassing issues loomed large. The first was that the much-heralded War Crimes Court had a building, judges, and an administrative structure, but no cases. The Criminal Investigations Department (CID) of the Ugandan Police Force, and the Directorate of Public Prosecutions (DPP), had been unwilling to proceed with building up cases for conflict related crimes in the absence of any political or legal direction as to the applicable law and jurisdiction of the WCC.¹¹ This linked to the second problem: Uganda had not yet incorporated the Rome Statute's obligations into domestic law. An ICC Bill was drafted as early as 2004, but it did not become a political priority until early 2010, with the prospect of thousands of delegates from ICC state parties, observer states, international organisations, and NGOs, arriving for a Review Conference in a country that had failed, so far, to enact its own ICC legislation.

⁷ McAuliffe, 'Transitional', p.6.

⁸ The war crimes court is also sometimes referred to the 'Special Division of the High Court' hence the acronym SDHC.

⁹ Nouwen, 'Complementarity', P.182.

¹⁰ Ibid.

¹¹ Ibid.

Parliamentarians were lobbied by the JLOS-TJWG, the WCC judges, and donors, and in March 2010, two months before the planned Review Conference, an ICC Bill was passed into Ugandan law.¹² The 2010 ICC Act makes genocide, war crimes, crimes against humanity, and modes of liability as defined by the Rome Statute, offences under Ugandan law.¹³ When the practice directions of the ICD were eventually issued by legal notice in May 2011, the court was officially re-named the ‘International Crimes Division’ (ICD).¹⁴ According to Paragraph 6 (1), the court shall try genocide, war crimes and crimes against humanity, but also *terrorism, human trafficking, piracy* and all other international crimes listed in Uganda’s 2010 ICC Act; 1964 Geneva Conventions Act, Penal Code Act and ‘any other penal enactment’ (italics added).¹⁵ An official at the ICD explained that ‘the idea was to make the court busy and it was decided that judgments cannot be limited to war crimes or we would just be sitting here’.¹⁶ Why? Firstly, there is a strict prohibition against retroactive application of the law in the Ugandan Constitution, which meant the DPP would not charge an individual for crimes under the ICC Act that were committed prior to 2010.¹⁷ The second impediment was that while there were no restrictions as to the category of persons the ICD had jurisdiction over, Uganda’s Amnesty Act remained in effect (after a brief lapsing between May 2012 to May 2013, which is explored in more detailed below). An amendment to the Amnesty Act in 2006 stated that the Minister of Internal Affairs could bar certain individuals from receiving amnesty through a statutory instrument made with the approval of Parliament, but no such ‘instrument’ has ever been sought by the government.¹⁸ The 2007 AAR instructed the government to ‘introduce any amendments to the Amnesty Act...to bring it into conformity with the principles of this agreement’ but to date no such amendments have been tabled.¹⁹

¹² International advisers from the Public International Law Policy Group (PILPG), funded by USAID, had presented JLOS with an unofficial draft bill in 2010 which was modeled more closely on the Rome Statute but this draft was never presented to parliament.

¹³ International Criminal Court Act (“ICC Act”), Acts Supplement No.6, Uganda Gazette, no.39, vol. CIII, June 25, 2010; Human Rights Watch, ‘Justice’, p.5.

¹⁴ The High Court (International Crimes Division) Practice Directions, Legal Notice no.10 of 2011, Legal Notices Supplement, Uganda Gazette, no.38, vol.CIV, May 31, 2011;

¹⁵ Ibid.

¹⁶ Author interview with ICD official, Kampala, 25.04.2012.

¹⁷ Author interview with senior ICD official, Kampala, 26.04.2012; Author interview with DPP official, Kampala, 02.05.2012; Nouwen, ‘Complementarity’, p.205-206;

¹⁸ The Uganda Amnesty (Amendment) Act, 2006; An Act to amend the Amnesty Act, Cap.294.

According to a senior ICD official, a request to exclude someone from amnesty would be ‘too difficult to uphold against criticism in Parliament... because, on what basis can you say “this one in, this one out”’, Author Interview, ICD official, Kampala, 25.04.2012.

¹⁹ AAR, clause 14 (4).

The ICD in its original formation was seen as a ‘court of complementarity,’ and from the outset the domestic and international architects of the court wanted its structure to ‘mirror’ the ICC as far as possible.²⁰ Thus ICD practice directions stipulated that at least three judges sit on the ICD. In 2012 that number was four, but due to the lack of cases ICD judges currently ‘move around doing other High Court trials’.²¹ Departing from normal Ugandan judicial practice, the ICD has an integrated structure with an in-house registry, a dedicated international crimes section of the DPP, and ‘focal point’ CID investigators working on ICD investigations.²² Sentences for crimes under the ICD’s jurisdiction range from short-term imprisonment to the death penalty.²³ Decisions made by the ICD can be appealed against to the Constitutional Court in the first instance, and after that to Uganda’s Supreme Court. The Ugandan government and international donors continue to fund the ICD through normal justice sector budgeting, through the SWaP budget, and also through additional program support. There is no detailed breakdown of justice sector funding, but the interpretation of one senior donor official linked to the setting up of the ICD from the outset was that,

‘the ICD, all the set-up of the Court, all the training of the judges, I don’t know, 99% is donor funded. It was completely donor driven and it still is’.²⁴

Since 2012, support for the ICD has been included in the JLOS Strategic Investment Plan III, which states that:

‘the sector will focus on the overall strengthening of the International Crimes Division (ICD) of the High Court of Uganda by providing necessary technical or logistical support; this may include ensuring the ICD is equipped to handle cases of gender based violence....’²⁵

The main role of justice-sector donors to date has been to assist ICD officials to complete guidelines on witness protection law, while UN Women undertake training on how to prosecute sexual and gender based violence. There is also additional ‘capacity’ for training for judges and staff.²⁶

Justice sector donor officials acknowledged that formal processes were moved forward quickly because there was more funding for them and because as a ‘technical’

²⁰ Nouwen, ‘Complementarity’, p.181; p.185.

²¹ Author interview with ICD Official, Kampala, 24.04.2012.

²² Ibid. See also, HRW, ‘Justice’, p.7; Nouwen, ‘Complementarity’, p.184.

²³ HRW, ‘Justice’, p.8.

²⁴ Author interview with donor official, Kampala 05.06.2012.

²⁵ SIP III, p.30.

²⁶ Author interviews with donor officials, Kampala, April-June, 2012.

intervention it was quite easy to coordinate around the setting up of the Court.²⁷ It was to be in Kampala, where the donors were based. The Principal Judge at the time, James Ogoola, was a determined advocate for the establishment of the Court, and a proactive figure whom donors believed would provide strong leadership. Setting up the ICD, said one JLOS official was ‘easy...you just get some funding. Donors like to support the ICD, they see it as something going on’.²⁸ There was no deliberate ‘sequencing’ of TJ measures; rather, the conviction at the time was that other AAR objectives, and the resolution of the thorny question of the blanket amnesty, would eventually fall into place.²⁹

GoU enthusiasm for pushing forward with formal justice processes in the form of both the ICC Act and the ICD was motivated by two things. The first, alluded to above, was related to international status and prestige, not to mention international funds. One judge argued that the Court was a ‘great innovation in bringing Uganda into the limelight’.³⁰ Indeed, according to a Ugandan lawyer who worked closely with the ICD, the GoU was ‘very susceptible’ to donor pressure in this area, in part because of the reputational rewards it could derive from ostensible compliance with the donor agenda. He argued that:

‘involvement from donors was key – particularly EU members. The formation of the ICD was a result of heavy donor pressure. The trial of Kwoyelo was a result of heavy donor pressure. Uganda, in turn, was keen to show that it was a leader in the field’.³¹

The Ugandan judiciary, moreover, has generally prided itself on being robust and independent.³² There was certainly a feeling that, according to one JLOS official, ‘we as a country, we are developed, we have an elaborate court system, we can deal with this’.³³ Indeed the administrative circular announcing the plans to establish the new division of the High Court highlighted that Uganda was already an ‘exporter’ of international justice, because it had legal representatives at the ICC, the SCSL, and the ICTY.³⁴

²⁷ Author interview, donor official, 05.06.2012.

²⁸ Author interview with JLOS official, Kampala, 18.05.2012

²⁹ Author fieldnotes, Kampala, April-June 2012.

³⁰ Letter from Hon. Mr. Justice A.S Choudry to Hon. Mr., Justice Akiiki Kiiza, Head of International Crimes Division, 25 June 2011, (on file with author)

³¹ Author interview with Ugandan lawyer, Kampala, 09.05.12

³² Author interview with Ugandan legal experts, Kampala, 22.05.2012 and 09.05.2012

³³ Author interview with ICD official, Kampala, 25.04.12

³⁴ Nouwen, ‘Complementarity’, p.181.

The second GoU motive, linked to the first, was the desire to re-capture the jurisdiction of the LRA conflict from the ICC, but more conceptually than practically. There were vague murmurs that the government might try to push for domestic prosecution of the remaining 'ICC 3' if they were ever captured, but the consensus was that this was unlikely.³⁵ In the past, the desire for domestic capacity in this area was framed in terms of the ICC's 'complementarity' principle. At the time of writing this remained the case but 'complementarity' was understood more explicitly as a method of prospective impunity. The Ugandan political elite had been on a steep learning curve since 2003, and there is currently a much fuller understanding of the nature of the ICC and the danger it represents. Particularly irritating for the current regime has been the routine cry of political protestors, 'take Museveni to the ICC!', particularly in reaction to the violent crackdown on the Walk To Work protests which followed the 2011 Ugandan election.³⁶ In the context of the ICC indictments following the post-2007 Kenyan election violence, and the Arab Spring uprisings in early 2011, these calls hardened the attitude of the Government towards the Court.³⁷ A desire to re-assert judicial and political jurisdiction over the prosecution of crimes committed during the war in northern Uganda, and particularly those perpetrated by the UPDF, made sense in this context. Lawyers close to the Court argued that 'complementarity is the only way out,' and that the Government had been bruised by the perceived obstinacy of the ICC.³⁸ Having its own ICD was not only a status symbol but also a way of containing and controlling the 'judicialisation' of politics related to government and rebel violence against civilians.

Despite the wording of the AAR agreements and the Statute of the Court, it became clear very quickly that prosecution of UPDF or Government-linked war crimes by the Court would be a political impossibility. In July 2008, the same month as the ICD was established, Human Rights Watch released a report urging the ICC to investigate UPDF atrocities in the north.³⁹ In reaction, the UPDF's acting spokesperson urged that this call 'should be ignored' and that 'anybody with evidence against the UPDF should direct it to the government investigative agencies'.⁴⁰ Despite the fact that the ICD had jurisdiction

³⁵ Field notes, Kampala, April-June 2012.

³⁶ According to a wide range of interviewees in Kampala these calls were not interpreted by Museveni or his inner circle as a threat; rather they were seen as an irritant. Field Notes, Kampala, April-June, 2012.

³⁷ Ibid.

³⁸ Author interview with Ugandan legal experts, Kampala, 22.05.2012 and 09.05.2012

³⁹ Human Rights Watch, 'Courting History: The Landmark International Criminal Court's First Years', *Human Rights Watch* (July 2008).

⁴⁰ 08KAMPALA1090, 05.04.2008.

over UPDF/NRA,⁴¹ the political reality, according to one senior JLOS official was as follows:

‘UPDF prosecutions? It is completely out of the question. The DPP would never investigate because the ICD is a victor’s court. When those in authority come through with a gun, they will be unlikely to support accountability. Keeping the UPDF out protects the NRM from the time when they were fighting in the Bush’.⁴²

The official response to questions concerning NRA/UPDF impunity was two-fold. Followed by long pauses and nervous laughter, officials in the DPP office explained that there were no investigations under way because there were no leads. One official argued that:

‘we have called upon the affected communities to come up, but apart from talking so much about this and about that, there is really nothing. You know, cases are built on evidence and we have requested for some information to initiate the investigations against the army’.⁴³

The other line is that accountability systems are already in place for UPDF crimes. DPP officials have even argued that UPDF soldiers were tried for war-related offences in civilian courts in the North during the war, despite the fact that the High Court in Gulu was barely operational during this period.⁴⁴ The more common response was that UPDF soldiers are tried in the Court Martial system, and that any other legal processes would be ‘too lenient’.⁴⁵ Minister Rugunda was visibly annoyed by the suggestion that the UPDF might be tried in the ICD:

‘There are existing accountability mechanisms for the UPDF – we have martial law and soldiers have been tried. It is the LRA that lacks accountability systems. The UPDF is already subject to rigorous accountability systems and this is the way the Parliament of Uganda has chosen things to be’.⁴⁶

The judiciary – both judges and officials – remain skeptical that there will be UPDF trials under the current government.

The structural bias embedded in the ICD is a logical extension of the structural differences between the two sides at Juba and a reflection of Juba’s outcome, which,

⁴¹ HRW, ‘Justice’, p.16

⁴² Author interview with JLOS official, Kampala, 18.05.2012.

⁴³ Author interview with DPP official, Kampala, 02.05.2012.

⁴⁴ The DPP official argued that she had come across at least fifteen cases during the war, many of which resulted in death sentences. Civil society refutes this claim, arguing that they have never seen evidence of these cases, and that the court system throughout the north was largely inactive during the war. The DPP official promised to show me the files, but then told me that she had lost them.

⁴⁵ Author interview with Minister Rugunda, Kampala, 04.05.2012.

⁴⁶ Ibid.

although not decisive, involved no domestic political transition. It was quite clear from the outset that the ICD was not going to be an institution capable of providing the legal space through which disagreements between GoU and the LRA could be fairly channeled. Again, this pointed to the tension between transitional justice and rule of law promotion. Despite the two being conflated in donor programming and the SIP III, those who opposed the Court argued that its hasty set-up and poor prospects communicated the wrong message about how criminal procedures should work.⁴⁷

The Prosecution of Thomas Kwoyelo

The trial of Thomas Kwoyelo – the first domestic war crimes prosecution in Uganda - provides a fascinating exemplar of the international and domestic political machinations that shape the post-Juba accountability debate in Uganda. The trial, to date, has been packed with drama, intrigue and politics. Debates have centered around two interlocking issues: the disputed seniority of Kwoyelo in the LRA, and the institutional, political, and legal conflict between amnesty and prosecution.

The trial so far

Thomas Kwoyelo is a former LRA member who was taken into custody by the UPDF in Garamba National Park in north-eastern DRC in March 2009. According to the CID investigating officer, Kwoyelo was wounded and captured by UPDF soldiers during armed combat, and transferred back to Uganda by the UPDF.⁴⁸ Initially Kwoyelo was in the custody of military intelligence for approximately three months, in a location that was not disclosed by the Ugandan authorities. According to one of Kwoyelo's affidavits this period of detention was spent at the private residence of an official of the Chieftaincy of Military Intelligence on the outskirts of Kampala. Kwoyelo stated that he was forced to sleep on the floor with no bedding or toilet facilities, and that he endured solitary confinement for twenty one hours a day, as well as sleep deprivation during interrogations that could last up to two days.⁴⁹ The Chief Investigating Officer refuted

⁴⁷ Author interview with Ugandan legal experts, Kampala, 22.05.2012 and 09.05.2012; see also McAuliffe, 'Transitional', p.9.

⁴⁸ 1st Respondent's Affidavit in reply (Lawrence Ogen Mungu, Assistant Inspector of Police, attached to CID headquarters, Kibuli), 16 August 2011; Kwoyelo's indictment notes that he was arrested at Garamba National Park by the UPDF after getting injured in a fire fight on 2 March 2009.

⁴⁹ Affidavit in support of the Constitutional Reference No.36 of 2011, Thomas Kwoyelo, Respondent (on file with Author); According to an Enough! Project report, 'many' former combatants are kept in 'safe

these claim, and stated that Kwoyelo was held in detention at the 1st Infantry Division Headquarters in Kakiri, Wakiso District, for ‘recuperation’.⁵⁰ Three months after his capture, the police formally requested that the UPDF hand Kwoyelo over for prosecution, and on 4 June 2009 he was charged before Gulu Chief Magistrates Court with offences under the Penal Code Act, including kidnapping with intent to murder.⁵¹ State Attorney Sam Oola explained to the Court that inquiries into Kwoyelo’s alleged crimes were ongoing, and requested an adjournment.⁵² Kwoyelo was remanded to prison in Gulu, and later transferred to Luzira maximum security prison near Kampala.

Whether on his own accord or under pressure from his legal team, Kwoyelo applied for amnesty in January 2010 while in custody at Luzira.⁵³ On 19 March 2010, the Amnesty Commission wrote a letter to the Director of Public Prosecution (DPP). This standard letter stated that the ‘the Amnesty Commission considers him as one who is qualified to benefit from the Amnesty process’.⁵⁴ It requested the DPP’s certification, under sections 3 and 4 of the Act, that Kwoyelo was not being detained for any other crimes, unrelated to the rebellion.⁵⁵ The DPP never responded to this letter, so amnesty was not granted. Instead, in August 2010, two months after the ICC Review Conference had taken place in Kampala, Kwoyelo was charged at Buganda Road Magistrates Court with twelve counts of violation of Uganda’s 1964 Geneva Conventions Act. The counts included grave breaches of willful killing, taking hostages, and extensive destruction of property in the Amuru and Gulu districts of northern Uganda. When Kwoyelo’s trial eventually opened at Gulu High Court (the ICD used these premises for the trial), on 11 July 2011, the prosecution submitted an amended indictment, adding 53 alternative counts under

houses...illegal and irregular places of detention used by the Ugandan military and secret services – run by the ...CMI, in Kampala’, often for up to three months or longer. See Ledio Cakaj, *Too Far From Home*, Enough! Project, (February, 2011), p.8.

⁵⁰ 1st Respondent’s Affidavit in Reply (Lawrence Ogen Mungu, Assistant Inspector of Police, Attached to CID Headquarters, Kibuli), 16th August 2011

⁵¹ ‘LRA’s Kwoyelo Charged With Kidnap’, New Vision, 04.06.2009, <http://www.newvision.co.ug/D/8/13/683670> (accessed 07.08.2012).

⁵² 1st Respondent’s Affidavit in Reply 16th August 2011; ‘LRA’s Kwoyelo Charged With Kidnap’, *New Vision*, 04.06.2009, <http://www.newvision.co.ug/D/8/13/683670> (accessed 07.12.12).

⁵³ According to the Respondent’s Affidavit, Kwoyelo applied for Amnesty on 4th January 2010 and ‘the matter was forwarded to the DPP for certification’; According to Kwoyelo’s affidavit, the application was made on 10th January 2010.

⁵⁴ Letter from Amnesty Commission to DPP, 19th March 2010, (on file with author).

⁵⁵ Affidavit in support of the Constitutional Reference No.36 of 2011, Thomas Kwoyelo, Respondent (on file with Author); Nouwen, ‘Complementarity’, p.215.

Uganda's penal code, including murder, kidnapping and robbery.⁵⁶ Kwoyelo pleaded not guilty to all charges, and his defence team immediately indicated that they had preliminary objections relating to the constitutionality of the case, which are set out below.

Two weeks later, on 25 July, a second court session was held, during which Kwoyelo's legal team requested a 'reference' to the Constitutional Court in order that their objections to the case be heard. On 16 August, the Constitutional Court heard oral submissions from both sides regarding the defence counsel's objections, which were two-fold. The first objection was that the Kwoyelo was being denied equal treatment under Uganda's Amnesty Act by being refused amnesty.⁵⁷ The second was that Kwoyelo's initial detention period under the UPDF was unconstitutional. In a surprise move, which will be explored in more detail below, the Attorney General's representative argued that the Amnesty Act itself was unconstitutional, and should not therefore prevent Kwoyelo's case from proceeding. On 22 September, the Constitutional Court delivered its ruling. Focusing on arguments relating to the Amnesty Act, it found that the Act *was* constitutional, and that this should bar Kwoyelo's case from proceeding because he was being treated unequally under it.⁵⁸ The DPP immediately appealed against the decision to the Supreme Court. Two and half years later, in March 2014, the Supreme Court finally sat to hear the Attorney General's appeal, and after hearing submissions from both the Attorney General and the defendant's legal team, the judges ruled that they would make a decision 'on a date to be announced in the future'.⁵⁹ Following the Constitutional Court's September 2011 ruling, Kwoyelo's lawyers presented a petition to the High Court requesting that he be released from prison. In January 2012 the High Court ruled in Kwoyelo's favour, but to date he remains in Luzira, because the DPP continues to refuse to certify the granting of Amnesty.⁶⁰

⁵⁶ Uganda's ICC Act had only come into force in March of that year, and restrictions in Uganda's constitution against the retroactive application of laws resulted in a decision not to charge Kwoyelo under it.

⁵⁷ Constitutional Petition 036/2011 (Arising out of HCT – 00 – ICD- Case 2/2010).

⁵⁸ For a concise descriptions of the arguments it deployed to uphold the Act, see Nouwen, 'Complementarity', p.220.

⁵⁹ 'Rebel Chief Kwoyelo Yet to Know Amnesty Fate', *New Vision*, 19.03.2014 <http://www.newvision.co.ug/news/653701-rebel-chief-kwoyelo-yet-to-know-amnesty-fate.html> (accessed 19.03.2014).

⁶⁰ Kwoyelo's lawyers have lodged a petition to the African Commission on Human And People's Rights to challenge his continued pre-trial detention, but the ACHPR has not yet made a ruling.

Kwoyelo narratives

Kwoyelo's own narrative, expressed through his legal team and in various court documents, is that he was abducted by the LRA in 1987 at the age of 13 while on his way to Pabbo Primary School in Gulu district. He was never afforded an opportunity to escape, and like other abductees he gradually rose in rank until he became one of the commanders of the LRA. Following the failure of the Juba peace talks, he was captured at Garamba and imprisoned.⁶¹ For Kwoyelo, the injustice lay in the fact that other officers, more senior to him, including Brigadier Banya, who was captured by the UPDF in 2004, and former LRA spokesperson Sam Kolo, who surrendered in 2005, both applied for and were granted amnesty under the Act.⁶² His submission claimed that he was not only a victim of unequal treatment, but also of gross government negligence, because the Government of Uganda failed fundamentally in the duty of care for its own citizens. In one of his affidavits he states that:

‘the same state which should have protected me from abduction as a child is the same state that is prosecuting me when I have since renounced armed rebellion’.⁶³

The prosecution's narrative was that Kwoyelo was, at all times relevant to the indictment, a senior commander/officer in the LRA. Specifically, the indictment argues that:

‘all attacks by the LRA which took place in Kilak County, Amuru District, between 1987 and 2005... were either commanded by him or were carried out with his full knowledge and authority’,

and that during his time as a senior LRA commander he:

‘occupied several senior positions at various times, including commander of operations, director of military intelligence, and in-charge of sick bays’.⁶⁴

Kwoyelo, according to senior DPP officials, was not only ‘high-level’, he was also a willing recruit, who joined the LRA of his own accord in his twenties.⁶⁵ In addition, it is claimed that the prospect of amnesty did not immediately appeal to him. According to

⁶¹ The date of Kwoyelo's capture remains unclear. According to his affidavit he was captured in 2008 by the UPDF in Garamba whilst assembling to await the outcome of peace talks; according to prosecution documents, he was captured in March 2009 in Garamba; Constitutional Petition 036/2011 (Arising out of HCT -00-ICD-Case 2/2010) (on file with author).

⁶² Caleb Alaka's statement, Republic of Uganda Constitutional Appeal No.01 of 2012, arising from Constitutional Petition No.36 of 2011, Arising out of HCT-00-ICD-Case no. 02/10, (on file with author)

⁶³ Affidavit in support of the Constitutional Reference No.36 of 2011, Thomas Kwoyelo, Respondent (on file with Author).

⁶⁴ Amended indictment, (on file with author).

⁶⁵ Author interview with DPP official, Kampala, 2,05.2012

some sources he came under considerable pressure from both his family and his legal team before he was willing to apply for it.⁶⁶

Commentators have pointed to the fact that the ICC decided not to issue a warrant for Kwoyelo during its own investigations.⁶⁷ According to Human Rights Watch, the ICC investigated some of the incidents covered in the indictments against Kwoyelo, but Kwoyelo himself was never the subject of an ICC arrest warrant.⁶⁸ DPP officials working on the case said that the ICC has shared evidence on Kwoyelo that it did not intend to use for its own indictments, and that the relationship between the ICC and the Ugandan prosecuting authority was ‘very supportive’.⁶⁹

The puzzle of the prosecutorial strategy

From international legal observers to local communities in northern Uganda, the question on everyone’s mind was always ‘why *Kwoyelo*?’. As one donor official put it – perhaps a little too graphically – ‘it’s the question I think about in the shower in the morning’.⁷⁰ The answer given by a senior DPP official was rather straightforward, and highlights the convenient timing of his capture:

‘at that time, because peace talks had just collapsed but the AAR was in existence, his arrest was timely and that is why we picked on him’.⁷¹

A powerful local politician from Kwoyelo’s home area in northern Uganda also linked his arrest and prosecution to the post-Juba political climate. Comparing the treatment of Kwoyelo to that of senior commanders who had received Amnesty before him, he argued that:

‘Amnesty was meant for someone who came and says, ‘chairman, come and pick me, because I have escaped’, or for Sam Kolo, who had an arrangement with the security organ of the Government. Even Banya, I went to welcome him from Atiak (...)Why was he not sent to court? Because at that time the issue of dialogue with LRA was very high – so it was a strategy by government to revise the propaganda of the LRA that if you escaped you would be killed or sent to court. So that was a PR strategy of the government. In a war situation the government uses any tool. By the time they arrested Kwoyelo, government had the wings, it is flying, knowing that it has already swept the courtyard, now the

⁶⁶ Author interview with DPP official, Kampala, 2.5.2012; Field notes, Kampala, April-June, 2012.

⁶⁷ See for example, Human Rights Watch, Uganda: Q&A on the trial of Thomas Kwoyelo, (July, 2011), <http://www.hrw.org/news/2011/07/07/uganda-qa-trial-thomas-kwoyelo> (accessed 08.09.2011)

⁶⁸ Human Rights Watch, ‘Justice’, p.10.

⁶⁹ Author interview with DPP official, Kampala, 02.05.2012.

⁷⁰ Author interview with donor official, Kampala, 05.06.2012.

⁷¹ Author interview with DPP official, Kampala, 02.05.2012.

message can be different, now the government can say, ‘when you go by rebellion – this is what the government will do to you’.⁷²

The timing of Kwoyelo’s capture also allowed his fate to become tied up with broader concerns related to the political economy of donor interest in the fledgling court. In early 2010, as the DPP was deciding what to do about Kwoyelo, preparations for the ICC Review Conference in Kampala were beginning in earnest. As one Prosecutor noted, ‘we could not declare amnesty for him when all eyes were on the Court, remember that it was the ICC Review Conference here in Kampala that year’.⁷³ A lawyer close to the process expressed a similar sentiment, ‘so much has been sunk into the Court. They had to have that first trial’.⁷⁴ Nevertheless, the decision of the prosecution to bring a case against a former LRA member, who had evidently applied for amnesty whilst the Amnesty Act was still in operation, remained surprising. It raised serious questions about prosecutorial strategy and expected outcomes. As Human Rights Watch noted about the Amnesty Act:

‘by its terms the act appears to preclude all cases against LRA members so long as they reject rebellion, irrespective of the ICD or of the crimes in which LRA members may be implicated’.⁷⁵

Moreover, other senior LRA members had benefitted from the amnesty *since* the ICD has been in operation. Most notably, Charles Arop, the former LRA director of operations, who surrendered himself to UPDF forces in DRC in November 2009, and was granted amnesty later that year.⁷⁶

On what grounds did the prosecution *legally* justify its decision to prosecute a suspect who had applied for Amnesty? Two key arguments have been put forward by the DPP, the AG, and by supportive politicians. The first was that international law does not recognize domestic amnesties so Kwoyelo was charged under the Geneva Conventions Act, which relates to international armed conflict (a critique of this logic follows below).⁷⁷ At a meeting with the DPP in mid-2012 the impression given was that the fate of the case hinged in large part on the ability of the State Attorney to prove that the LRA

⁷² Interview with local political, Pabbo, 27.08.2013

⁷³ Author interview with DPP official, 02.05.2012.

⁷⁴ Author interview with Ugandan lawyer, Kampala, 22.05.2012

⁷⁵ HRW, ‘Justice’, p.13

⁷⁶ Ibid.

⁷⁷ Another commonly heard justification for the trial – particularly among JLOS officials - is that the Amnesty Act does not apply to Thomas Kwoyelo because he was ‘captured’. This cannot be supported on legal grounds because Part 3 Section 2 of the Act applies to anyone who is in ‘detention’ and in any case, Amnesty has been granted to those who have been ‘captured’ on numerous occasions.

rebellion was part of an ‘international’ conflict. However, the ICC in its own indictments had characterized the conflict as an internal one. According to one official, ‘we informed the ICC of our position and they have told us, ‘no, not for us’, but we are not bound by them’.⁷⁸ The problem with the ‘international crimes’ argument is twofold. Firstly, the idea that amnesties are illegal under international law is often linked to the argument that Uganda must adhere to its obligations under the Rome Statute. The Rome Statute, however, has no clause in it forbidding Amnesty. Also, while the ICC OTP has maintained its position that the ‘ICC 5’ are under the jurisdiction of the Court and must not be granted amnesty, they have never explicitly condemned the granting of amnesty to other categories of offender. The second problem with the ‘international crimes’ argument was framed in the following terms by Sarah Nouwen:

‘Kwoyelo has not been charged under the Geneva Conventions but under the Geneva Conventions Act. This latter act, like the Penal Code Act, is a domestic act. Crimes under domestic law are excluded from the scope of the Amnesty Act only if there is an Act explicitly stating so. There is none that does’.⁷⁹

A second, and related, legal argument has already been referred to above: the AG’s argument that Thomas Kwoyelo could not derive any legal rights from the Amnesty Act because the Act itself was unconstitutional.⁸⁰ The blanket amnesty provision, the AG’s representative told the Constitutional Court judges in September 2011, infringed on the constitutional independence of the DPP and the judiciary to:

‘consider the facts/circumstances of individual cases, available evidence, and then take the specified issues into consideration and make an independent decision to prosecute or not to prosecute’.⁸¹

The fact that the Attorney General was condemning a law that he himself had been involved in enacting was not lost on his representative, who accepted the ‘rather unusual’ nature of the case.⁸² Nevertheless, it was her contention that a problem with an existing law had been identified - in her words a ‘justifiable case of human error’ - and that the Attorney General had a legal obligation, under his mandate, to rectify the situation.⁸³ The Amnesty Commission, for its part, was bewildered by what was going on in the

⁷⁸ Author interview with DPP official, Kampala, 02.05.2012.

⁷⁹ Nouwen, ‘Complementarity’, p.217.

⁸⁰ Constitutional Petition 036/2011 (Arising out of HCT-00-ICD-Case 2/2010) (on file with author).

⁸¹ Ibid

⁸² According to Nouwen’s interviews, the Attorney General himself was unaware that his representative would be making arguments to this effect, and the Deputy AG was explicitly unsupportive of the argument that the Amnesty Act was unconstitutional, see ‘Complementarity’, p.223-4. Despite this, the same arguments were reiterated by the AG’s representative at the Supreme Court hearing in March 2014.

⁸³ Constitutional Petition 036/2011 (Arising out of HCT-00-ICD-Case 2/2010) (on file with author).

courtroom. The Commission Chair, Justice Onega explained that the Attorney General was ‘directly colliding’ with the Amnesty Commission and because they had no information about what was going on, Commission staff decided, ‘fine, we’ll go to the court and see what they say; that was all we could do’.⁸⁴ In a rather pointed example of the disjunction between different government institutions, the Amnesty Commission was presenting its budget and personnel changes to parliament on the very same day that the Attorney General was contesting its existence in the Constitutional Court.⁸⁵

Lawyers and NGO staff believe that the DPP and his officials were cognizant of the conflict in the legal framework concerning Kwoyelo’s prosecution but also confident that they had a strong case. It was presumed that the political leadership wanted a conviction (although it is hard to substantiate this). When the case came before the Constitutional Court, however, it simply could not succeed. On the one hand this might be interpreted as testament to the independence of the Ugandan judiciary. On the other hand, for those international NGOs and donors who supported individual accountability and no longer approved of the Amnesty Act, this was a failed opportunity for judicial activism. According to senior DPP officials, the Constitutional Court decision was a great surprise and has, ‘discouraged us from future investigations because it makes it feel futile if there is a blanket amnesty’.⁸⁶ The reaction of the JLOS-TJWG was also downbeat and a report drafted by the JLOS international TJ technical advisor, expressed ‘concern about the implications’ of the Constitutional Court ruling.⁸⁷

A legal expert close to the process has argued that the involvement of certain JLOS institutions has been very ‘negative,’ and that they have ‘taken ROL principles apart because they just want a conviction for Kwoyelo’.⁸⁸ The argument that the trial has undermined the rule of law in Uganda should be disconcerting for donors, who justify their funding of JLOS in terms of building the rule of law. Donors took a similar line to JLOS in their reaction to the Constitutional Court ruling. In private interviews, they emphasised their distaste for the blanket amnesty, and their desire to see a war crimes conviction at the ICD. To some extent this influenced their allocation of technical assistance to the Court. Before the trial began a senior official from the JLOS secretariat

⁸⁴ Author interview with Justice Onega, Kampala, 13.06.12

⁸⁵ Author interview with members of Kwoyelo legal defence team, Kampala, 09.05.12

⁸⁶ Author interview with DPP official, Kampala, 02.05.2012

⁸⁷ JLOS, *Justice at a cross-roads? Special report on the Thomas Kwoyelo Trial* (2011).

⁸⁸ Author interview with Ugandan legal experts, Kampala, 22.05.2012 and 09.05.2012

wrote to Danida requesting support for Kwoyelo's defence team in the preparation of their case.⁸⁹ Invoking the fair trial principles of the ICC, he pointed out that 'the Rome Statute...requires both parties to be effectively represented...the justice of the case requires that all parties be afforded the same legal assistance'.⁹⁰ Prior to this request in June 2011, just a few weeks before the trial was due to commence, one of the then six ICD judges, Justice A.S Choudry, wrote a strongly-worded letter to the divisional head, the Hon. Justice Akiiki Kiiza, which noted, amongst other things, that the lack of assistance to the defence counsel and the limited time they had to prepare their case would result in 'trial by ambush as we lack the required procedures for a fair hearing.'⁹¹ Nevertheless, Danida refused the JLOS request, arguing that it was up to the State to fund legal aid.⁹² According to one donor official, the feeling was that funding defense for war crimes was:

'hard to do... as donors so much money goes into supporting the victims and NGOs in the region and then at the same time you want to fund someone who is defending someone who killed families in that region?'.⁹³

The decision not to provide resources and facilities to assist in the preparation of an adequate defense, despite a donor- funded needs assessment which highlighted major problems with the 'state brief' system, was clearly questionable from the fair trial perspective that donors themselves were promoting.⁹⁴ Whether it was the correct decision or not, it created a perception among civil society groups and members of the Ugandan legal community that donors were more interested in funding a conviction than a fit-for-purpose ICD. It also illuminated the contradictory nature of 'technical' approaches which purport to be 'beyond' politics, but are in essence political interventions in the sense that they shape power relations through the allocation of resources.

⁸⁹ The letter to Danida is referred to in a subsequent letter that Gadenya Paul Wolimbya, Senior Technical Advisor, JLOS, sent to Mr. Gabriel Oosthuizen, Chief of Party, PILPG, dated 22.09.2011 (on file with author). Kwoyelo secured private counsel after waiting a year in prison without state counsel but his private counsel complained about the lack of research and investigative resources and that they were given an unacceptably short and predetermined time line for the beginning of trial: 'a 30 day deadline from the date at which the defence first received any substantive disclosure to the beginning of the trial', Author interview, Kwoyelo defence lawyers, Kampala, 09.05.12 and 22.05.12.

⁹⁰ Ibid.

⁹¹ Letter from Justice Choudry to Hon. Mr. Justice Akiiki Kiiza, 25.06.2011 (on file with author). It should be noted that Justice Choudry himself has not been a stranger to controversy see 'Justice Choudry fate rests with Judicial Commission', *The Independent*, 29.11.2008 <http://www.independent.co.ug/index.php/news/news/330-justice-choudry-fate-rests-with-judicial-commission> (accessed 03.04.13).

⁹² Gadenya, 'Letter'.

⁹³ Author interview with donor official, Kampala, 05.06.2012

⁹⁴ See PILPG/ICTJ-Facilitated Needs-Assessment Mission Final Report (March 2011).

The strange case of the lapsing and re-instatement of the Amnesty Act 2012-13

If the Courts were refusing to stamp out the Amnesty Act, other routes would have to be sought. This became of paramount concern to justice-sector donors, the AG, and the DPP, particularly after the Constitutional Court ruling effectively blocked any future war-crime related prosecutions at the ICD. When the Amnesty Act was passed in 2000, donors viewed it as a pragmatic peace-building initiative, encouraging its application and extension as part of the effort to end the war in northern Uganda.⁹⁵ After Juba, and with a new raft of possible TJ measures on the cards, the attitude of justice-sector donors changed. This, argued the Chair of the Amnesty Commission, was a challenge for the institution, because donors who once provided funds no longer wished to be associated with amnesty.⁹⁶ Indeed the Amnesty Act has always been a temporary measure, subject to periodic renewal.⁹⁷ Thus after the Constitutional Court decision, donor and JLOS efforts coalesced around convincing the government to amend or lapse the Act, which was due to expire on 24 May 2012. In early 2012, donors pushed for JLOS to set up a 'task force' at the technical level to consider possible options for the future of the Act. The work of the task force was to be co-ordinated by the two donor funded JLOS technical advisers, and was to include both 'popular consultations' on the Amnesty, and research to be undertaken by UN Women. The JLOS task force released an 'options' paper in April 2012, which toed the donor line, noting that:

'the co-existent nature of the Amnesty Act with other national laws intended to promote accountability for serious crimes presents an obstacle to the State's capacity to fulfill its duty to pursue justice and accountability of war crimes and gross human rights violations... The Amnesty Act, given its current context, has fulfilled and outlived its original role and purpose. Indeed, this was a common view expressed in consultations on the Act with key stakeholders, both government and non-state actors'.⁹⁸

Later, a JLOS official confided that these consultations 'were quick and we could have done more'.⁹⁹ The paper presented four 'options' to the JLOS leadership committee¹⁰⁰:

⁹⁵ Dolan points out that when the Government first talked about amending the Act in 2004, the World Bank and the UK government put pressure on them to extend it without amendment. The World Bank even threatened to withhold some funding unless this happened, see Dolan, 'Social', p.99.

⁹⁶ Author interview with Justice Onega, Kampala, 13.06.2012.

⁹⁷ See Amnesty Act 2000, s.16

⁹⁸ JLOS, *The Amnesty Law (2000) Issues Paper* (April, 2012), p.3-4.

⁹⁹ Author interview with JLOS official, Kampala, 18.09.2012.

natural lapse of the act; partial lapse of the act; extension without amendment; and extension with amendment. Drafted by the international technical advisor to JLOS, the paper was in clear opposition to the third option, largely on the grounds of international legal obligations to prosecute war crimes.

After the publication of the options paper meetings took place within the JLOS-TJWG about the future of the Act, and civil society observers were active in the discussions. The broad consensus in early May appeared to be that the Act should be extended for one year, with amendment, and that the amendment should include provision for a ‘conditional’ amnesty, linked in the future to other transitional justice processes such as truth-seeking, traditional justice, reparations, and judicial accountability.¹⁰¹ What followed in subsequent weeks was a surprising train of events. In mid-May 2012, in spite of discussions within JLOS on the future of the Act, the Minister of Internal Affairs, Hilary Onek, extended the Amnesty Act without amendment for one year.¹⁰² It was worst-case scenario for justice sector donors. Then, two weeks later, on 25 May 2012, he completely changed his mind, and issued a statutory instrument which declared that the ‘operation of Part II of the Amnesty Act’, had ‘lapsed’.¹⁰³ Part II of the Act comprised the central clauses, which mandated the process by which an individual could apply for and receive amnesty. At the same time the Minister extended, for one year, sections I, III and IV of the Act, which outline its rationale, and support for the day-to-day functioning of the Amnesty Commission and its role in providing resettlement and reintegration-support to former combatants. So, within a two-week period in May, the Minister of Internal Affairs had moved from ‘extension without amendment’, to the lapsing of what commentators would soon be calling the ‘heart’ of the Act. In terms of ‘options’ for the future of the Act, these two positions stood in diametrical opposition. In a rather bizarre explanation of the process by which these decisions had been reached, Onek said:

‘In the second week of May, me not being a lawyer, I said, OK we just have a blanket amnesty extension. Then I was corrected by JLOS, that this amnesty was not compatible with our law. Amnesty should be handled on a case by case basis

¹⁰⁰ JLOS, ‘Amnesty’. The JLOS ‘leadership committee’ is comprised of mainly of judges and Ministers and is responsible for ‘political leadership and guidance to the sector’.

¹⁰¹ Author interview with NGO staff member, Kampala, 04.06.2012.

¹⁰² Minister of State Hilary Onek, Keynote Speech to JLOS validation workshop, Kampala, 18.07.2012.

¹⁰³ Amnesty Act 2012 (Declaration of Lapse of the Operation of Part II) Instrument s.2; As Nouwen points out ‘The minister’s statutory instruments seem *ultra vires*: section 16 of the Amnesty Act allows the Minister to extend the expiry period of the Act; it does not allow him to pick and choose provisions for extension and expiration’, in ‘Complementarity’, p.226.

by JLOS. So Part II is now lapsed. So on advice from JLOS the Act is extended for one year, without Part II, until we have new laws in place’.¹⁰⁴

By all accounts, at a meeting of the JLOS leadership committee, after Onek’s initial decision to extend without amendment, the Minister of Internal Affairs came under serious pressure from the Attorney General, who was reportedly adamant that the Leadership Committee go along with the lapsing option. One observer noted that:

‘the AG persuaded convincingly that they should go with the lapsing option and the onus must be on the DPP to clarify the situation now. Discretion must now be with the DPP to ensure transparency in the prosecutorial policy and to ensure that victims are not prosecuted’.¹⁰⁵

A donor official provided a similar account of what had happened:

‘I think the AG or the DPP just made a really good case against blanket amnesty; that it was interfering with their work at the ICD. I think they were probably just the most informed voices in the leadership committee’.¹⁰⁶

The extent to which donors were involved in these machinations was not clear. In private, the key civil society organisations lobbying against the decision to suspend Part II argued that donor opposition to the Amnesty was being pushed via the JLOS secretariat. While some donor staff expressed genuine shock at the lapsing of Part II of the Act, others were more defensive. One argued that ‘those guys who support the amnesty are fanatical. It is not logical’.¹⁰⁷ A senior official at the Democratic Governance Facility was unequivocally supportive of the lapse: ‘yes, of course the government should stop this Amnesty. We need accountability. We need to stop this in Africa’.¹⁰⁸ Another donor official regarded the Minister’s decision as a ‘major step forward’ that should be ‘celebrated’.¹⁰⁹ In a revealing interview a senior JLOS official noted that, ‘there is a reason we encouraged the Minister to do it that way’. She explained that in consultation with donors it was decided that, ‘if we just kept renewing it or amending it there would have been no political impetus for a TJ policy, you know how things are in Uganda’.¹¹⁰ The logic was that while Amnesty was in place, progress on the broader TJ policy would stall indefinitely. Without Amnesty it would be incumbent on the Government to engage with TJ and to do *something* to move the

¹⁰⁴ JLOS validation workshop, Kampala, 18.07.2012.

¹⁰⁵ Author interview with JLOS official, Kampala, 04.06.12

¹⁰⁶ Author interview with donor official, Kampala, 05.06.2012

¹⁰⁷ Author interview with donor official, Kampala, 18.09.2012

¹⁰⁸ Author interview with senior DGF official, Kampala, 31.05.2012

¹⁰⁹ Author interview with donor official, Kampala, 04.06.2012

¹¹⁰ Author interview with JLOS official, Kampala, 18.09.2012

various processes forward. This approach was later criticised on two grounds. The first was that the lapsing of the amnesty in this way was procedurally non-democratic, and this was raised as an objection by several civil society organization.¹¹¹ The second was that without the requisite political engagement, there was little to suggest that a transitional justice policy drafted at the technical level would catalyse the substantive political change required for implementation and enforcement.¹¹² The Refugee Law Project would later criticise what it perceived as the myopic approach of JLOS and by extension its donor partners. When the JLOS draft TJ policy was circulated in May 2013 for comments, the RLP argued that it was ‘rushed’ and comprised an ‘incoherent Transitional Justice Policy Framework for the sake of filling the legal gap created by the lapsing of Part II’.¹¹³

The drama continued. On 21 May 2013, JLOS held a consensus-building workshop on its draft transitional justice policy, which recommended unequivocally that ‘there shall be no blanket amnesty’.¹¹⁴ Three days later, on 24 May 2013, the Minister of Internal Affairs directly contradicted this, and *reversed* his lapsing of Part II, thus fully re-instating the Act – and blanket amnesty - for another two years.¹¹⁵ That same month a report from the powerful Defence Committee in Parliament was published, arguing that the 2012 decision to lapse the Act was erroneous. The Minister of Internal Affairs later concurred, stating that he had made a mistake, and had come under international pressure.¹¹⁶ In the year between the lapsing of the Act in May 2012 and its re-instatement in May 2013, a group of activists and NGOs working in northern Uganda launched an advocacy campaign and put pressure on MPs and the Government to bring back the Amnesty. But the immediate catalyst, according to UN sources, was the visit of the US War Crimes Ambassador, Stephen Rapp, and his staff, who travelled to Uganda in May 2013 and requested that both the JLOS secretariat and the DPP soften their

¹¹¹ See for example, ‘Communique of Traditional and Religious Leaders, Civil Society and Other Organisations’, dated 20.06.2012, which condemns the lapsing of Part II of the Act. <http://www.enoughproject.org/files/Communique%20Amnesty%20Act%20June%202012.pdf> (accessed 30.06.2012).

¹¹² In ‘Revival’, Carothers refers to this substantive political change as ‘type 3’ ROL reform and arguing that it is much harder to achieve than ‘type 1’ (law reform) and ‘type 2’ (strengthening law related institutions).

¹¹³ RLP, ‘Renewed’.

¹¹⁴ JLOS, ‘Draft TJ Policy’, Executive summary, Point ‘e’.

¹¹⁵ In private conversations with CSO and legal staff, the legality of this decision has been questioned.

¹¹⁶ Parliament of Uganda, ‘Report of the Parliamentary Committee on Defence and Internal Affairs on the Petition of the Lapsing of Part II of The Amnesty Act’, (May, 2013) (on file with author).

stance on the Amnesty.¹¹⁷ The position of the US was, according to one UN official, that the amnesty was central to the success of US-supported military efforts against the LRA in central Africa.¹¹⁸ It is not clear what President Museveni's position was on this, but as a JLOS official noted, 'once the Defence Committee and the military say something, there is nothing small fish like the DPP or ICD can do'.¹¹⁹ This highlighted power asymmetries between JLOS and the military but also exposed serious divisions in donor policy towards transitional justice. Despite USAID providing off-budget capacity building funding for the war crimes court in 2008, the broader US position has always been more supportive of the Amnesty than its European counter-parts funding the justice sector.¹²⁰ As 24 May approached, legislative drafters were contacted by Prime Minister, Amama Mbabazi and the Deputy Speaker of Parliament, Jacob Oulanyah, and were directed to draft the necessary legislation to fully reinstate the Act.¹²¹

Analysing the Kwoyelo trial and the strange journey of the Amnesty Act

The procedural and ideological conflict between prosecution and amnesty was thrown into the spotlight during the first war crimes trial at the ICD. The Kwoyelo trial became an arena within which different spheres of institutional power interacted and competed. The legal issue was over accountability for war crimes; the political issue was over which institution was going to 'own' these processes. At the time of writing this remained unresolved. The President and the political leadership have refrained from taking a clear public position on the relationship between prosecution and amnesty. This should be understood in the context of what the political analyst Gaaki Kigambo terms 'President Museveni's overall strategy of stifling the emergence of strong institutions as his primary

¹¹⁷ Author interview with UN official, Kampala, 02.09.2013; Author interview with CSO official 03.09.2012

¹¹⁸ There is no media coverage of his visit but Enough Project, which advocated for the reinstatement of the Amnesty noted in a press release that 'in the final days leading up to the reinstatement of Part II of Uganda's Amnesty Act, a timely visit by US Ambassador-at-Large for War Crimes Issues, Stephen Rapp, may have helped give the act the final push it needed'. See, 'Policy Alert: Uganda Reinstates Key Tool to Boost Defections from LRA', <http://www.enoughproject.org/blogs/policy-alert-uganda-reinstates-key-tool-boost-defections-lords-resistance-army> (05.06.2013).

¹¹⁹ Author interview with JLOS official, Kampala, 13.09.2013.

¹²⁰ This was a view expressed by several members of the JLOS-TJWG during author interviews in Kampala, April-June, 2012.

¹²¹ Author interview with JLOS official, Kampala, 19.09.2013; Author interview with UN Official, 20.09.2013.

strategy for regime survival'.¹²² In 1997, Andrew Mwenda, a Ugandan journalist and political commentator wrote an article called 'Personalizing Power' in which he talked about 'one-man rule engineered (...) by President Museveni'.¹²³ Today, experts agree that political decision-making and political control are ultimately vested in the presidency and moreover, that Museveni has consistently kept institutions weak because he is concerned about the emergence of independent power centres that might challenge his authority.¹²⁴

The political, legal, and institutional machinations behind the arrest and indictment of Thomas Kwoyelo are indicative of this broader political context. According to DPP officials, Kwoyelo was captured soon after the peace process failed, and his case was therefore widely publicized in the Ugandan media. Unlike 'others who have come after him' who are 'almost at the same level', the DPP was, therefore, made aware of his arrest early on, before the UPDF could help facilitate an amnesty request.¹²⁵ Indeed the amnesty process has benefitted the UPDF considerably as a military strategy, and in the past it has facilitated amnesties for former LRA combatants then quickly incorporated them into the UPDF to fight the LRA.¹²⁶ For obvious reasons former LRA commanders are of particular value to the UPDF in their fight against Joseph Kony. According to a DPP official:

'People are being captured and we are not even informed about it and we have no opportunity to get involved before they are taken to the Amnesty Commission. One LRA suspect, we had investigated him before the capture, and we were not informed by the UPDF that he was captured and then benefitted from Amnesty'.¹²⁷

Institutional linkages between the DPP and the UPDF were weak, and DPP officials were certain that if they had not actively lobbied for a referral the UPDF would 'probably have been taken him to the Amnesty Commission'.¹²⁸ The Amnesty Commission, for its part, was also invested, both ideologically and materially, in the fate

¹²² Gaaki Kigambo, 'Is president Museveni plotting to crackdown on 'authoritative' House Speaker?', East African, August 24-30, 2013.

¹²³ Mwenda, 'Personalizing'.

¹²⁴ For a recent analyses of presidential authority in Uganda, see David Booth et. al *East African Prospects: An update on the political economy of Kenya, Rwanda, Tanzania and Uganda*, Overseas Development Institute Report (May, 2014), pp.56-75; Frederick Golooba-Mutebi, 'Collapse, War and Reconstruction in Uganda', *Crisis States Working Paper* 27 (2008); Tripp, 'Paradoxes'.

¹²⁵ Author interview with DPP official, Kampala, 02.05.2012.

¹²⁶ Cajak, 'Home'.

¹²⁷ Author interview with DPP official, 02.05.2012.

¹²⁸ Ibid.

of returning combatants, but the Commission has always been insecure. Its existence and future role has been in question ever since it was set up with the reluctant support of President Museveni in 2000. Government and donor support for the Commission has been halting and unpredictable; its legal mandate weak, and it has always suffered serious financial and capacity constraints.

As the trial Kwoyelo proceeded it became a battleground for different institutions with conflicting mandates and ambitions to take institutional and moral precedence in decisions about the fate of returning combatants. The DPP wanted to reclaim what they saw as their constitutional authority to determine whether or not those guilty of crimes under Ugandan law be prosecuted or not. The Amnesty Commission was fighting for survival in an increasingly hostile donor and GoU environment. The UPDF wanted to stay in control of those it captured or who fell into its custody as part of its military strategy in an unfinished conflict. The ICD itself, and JLOS as an institution, wanted to show off its donor-funded court, and prove that Uganda was capable of prosecuting the perpetrators of domestic war crimes.

The political leadership hovered above this institutional wrangling and deliberately avoided coming down on one side or the other. It was, one analyst said, 'like a cat standing on a high wall: you are not sure which way it might jump'.¹²⁹ On the one hand the Kwoyelo trial could be interpreted, as so many domestic war crimes trials have been, as a clear-cut instance of victor's justice.¹³⁰ The marching band that attended the opening of the trial in Gulu High Court added to the perception that what was happening was part of a theatrical demonstration of state power. Indeed, of all the transitional justice mechanisms listed in the AAR, the ICD was the GoU's dominant strategy for dealing with LRA crimes. It was pushed forward quickly and decisively. Despite this, the political leadership has never expressed a clear position on the relationship between prosecution, amnesty and military jurisdiction. 'This', said one DPP official, 'makes our work very hard'.¹³¹ Two themes which have characterized Ugandan politics since 1986 explain the Government's reticence. The first has been a desire to keep its options open, and to keep legislative processes rumbling on, whilst at the same time containing them so that they do not pose a political threat or close down political opportunities. The

¹²⁹ Author interview with NGO Director, Kampala, 08.05.2012.

¹³⁰ See, for example, Danilo Zolo, *Victor's Justice: From Nuremberg to Baghdad* (London: Verso, 2009).

¹³¹ Author interview with DPP official, Kampala, 02.05.2012.

fluctuations in the fate of the Amnesty Act exemplify this. The trajectory of one senior Government Minister's approach is instructive. In February 2012 she argued – during a discussion about the fate of the Kwoyelo trial – that ‘the amnesty is flawed and unpopular in the North’¹³². A few months after its lapse she changed her mind. Speaking as the MP for her northern constituency, she said, ‘we need the Amnesty back. I know there are problems with it, but people need it, it has an important psychological function’.¹³³ Indeed as one lawyer understood, ‘asking for the nullification of the Amnesty Act was a curious move in 2012 because the government still needs that Act’.¹³⁴

The second theme, already alluded to above, has been Museveni's strategy to concentrate and ‘personalize’ power in the hands of the executive branch of government, usually with the aid of the military and security apparatus.¹³⁵ A key part of this strategy has been to co-opt, manipulate and undermine the institutions – the legislature, the media and the judiciary – that might pose a challenge to the executive. That is not to say that those institutions do not – to different degrees – act independently; it is more the case that, in the words of Tripp, they have been ‘fairly defenceless against assaults on their integrity’.¹³⁶ Even the judiciary, which is generally regarded as enjoying a significant degree of independence, ‘has operated primarily on the defensive, trying to hold on to existing rights rather than pressing for greater freedom’.¹³⁷ This kind of ‘semi-authoritarian’ political set up, in which institutions are weak, undermined, and often vehicles for patronage, has potentially serious implications for current donor support for TJ, which, at the level of the State at least, has been concerned with institutionalizing efforts to confront the past.

As was discussed in the last chapter, and has been alluded to above, the sort of deterministic state-building logic put forward by donors prioritises building capacity for institutions and opening up conversations, the focus being on what Sriram refers to as ‘longer-term institutional restructuring rather than shorter term and contentious political activities’.¹³⁸ In Uganda, donor efforts to promote transitional justice through support of new institutional arrangements in the form of the ICD might create new structures, but

¹³² Author meeting with Government Minister, Kampala, 07.02.2012.

¹³³ Author meeting with Government Minister, Kampala, 18.09.2012.

¹³⁴ Author interview with Ugandan legal expert, 09.05.2012.

¹³⁵ Mwenda, ‘Personalising’; Tripp, ‘Paradoxes’, p.30.

¹³⁶ Tripp, ‘Paradoxes’, p.30.

¹³⁷ Ibid.

¹³⁸ Sriram, ‘Justice’, p.591.

these are shaped by existing power arrangements. In a semi-authoritarian state like Uganda these power arrangements exist in tension with the state-building, governance ambitions of international donors. An independent judiciary, respect for political and civil rights, fair and equal treatment of all persons before the law, are all necessary components of the ideal liberal conception of the practice of transitional justice.¹³⁹ They are also, however, the very elements that restrict and threaten the ability of a predatory semi-authoritarian executive to both control political life and stay in power.

On a visit to the ICD building in mid-2013, the sense of inertia and of expectations not met was palpable. Housed in a former residential mansion in the upmarket Kololo district of Kampala, the court was a ghost-town. A clerk noted with resignation that the donor rented premises had been ‘designed to look like the ICC’ and that they hoped to erect a glass panel between the defendants seating area and the rest of the courtroom to complete the modeling.¹⁴⁰ Not so long ago, the newly appointed judges were enthusiastic about their new court; the role that it might play in shaping future jurisprudence and the regional and international status it might afford the Ugandan judiciary. The registrar lamented that ‘we were expecting so many indictments’.¹⁴¹ An ICD judge leveled his frustration towards the decision of Kwoyelo’s defence to refer to the case to the Constitutional Court, ‘this this was supposed to be our time to shine!’, he said.¹⁴² Despite initial promise, the ICD no longer holds much credibility within the Ugandan judiciary. According to one lawyer, ‘many of the judges are now trying to leave the ICD. It is losing credibility everyday’.¹⁴³ A JLOS official concurred, ‘those in JLOS not involved in war crimes, they make fun of the people who go on donor-funded trips, they say, ‘what are you doing; you only have one suspect!’.¹⁴⁴

One gets the strong impression that donor funding for legal reform and law-related institutions is viewed by the political leadership as a containable intervention, one which can be almost effortlessly out-maneuvered. The Ugandan leadership understands how to provide broad declaratory support for certain international norms and agendas without having to compromise its own hold on power. Donors may quietly

¹³⁹ Thomas Carothers, ‘How Democracies Emerge’, *Journal of Democracy*, 18:1 (2007), p.14.

¹⁴⁰ Fieldnotes, Kampala, 25.04.2012

¹⁴¹ Author interview with ICD official, Kampala, 24.04.2012

¹⁴² Author interview with Justice Owiny-Dollo, Kampala, 08.06.2012

¹⁴³ Author interview with Ugandan lawyer, Kampala, 09.05.2012

¹⁴⁴ Author interview with JLOS official, Kampala, 05.06.2012

acknowledge this, but they have hedged their bets, basing their support for transitional justice on the speculative and suppositious logic that doing something is better than doing nothing, and that under the right tutelage in the form of ‘capacity building’, a Ugandan War Crimes Court is a force for good. As this chapter has argued, whether or not this is the case remains very much open to question.

A journey up to Acholiland

In the final section of this chapter we leave the corridors of power in central Kampala and travel up to Acholiland. This allows for a fuller understanding of the ICD as more than just a court but rather as an arena in which ‘subjectivities are shaped’.¹⁴⁵ What follows is a closer examination of the ways in which the Kwoyelo trial re-enacted ‘periods of violence and state repression’ and how respondents’ different experiences of that recent history produced varying interpretations of the ‘justness’ of the process.¹⁴⁶ Indeed the Kwoyelo trial has been a topic of intense media and public interest. Journalists report ‘divided’ views amongst generic ‘LRA victims’, who are reported as either seeing Kwoyelo as someone who has wrought havoc and calling for justice to be done in a court of law, or as seeing Kwoyelo as a victim himself, and asking that he be forgiven and reintegrated back into his community through ‘traditional’ methods.¹⁴⁷ NGOs working in northern Uganda, meanwhile, are quoted as criticizing the trial because of its selective nature.¹⁴⁸ Some go further, arguing that legal prosecutions are culturally inappropriate in this context.¹⁴⁹ In every research site in Acholiland, these views came up. But there were also some observable patterns in the way that people talked about the trial that are not captured in journalists’ or NGO accounts.

Attitudes towards the Kwoyelo trial tended to shift depending on whether the respondent ‘individuated’ or ‘de-individuated’ Thomas Kwoyelo. The approach people took was usually shaped by their own wartime experiences. People who suffered directly at Kwoyelo’s hands or who knew others that had done so described a profoundly violent and dangerous man who willingly joined the LRA in his adult life and went on to

¹⁴⁵ Wilke, ‘Staging’, p.120.

¹⁴⁶ *ibid*, p.117-18.

¹⁴⁷ See footnote 4

¹⁴⁸ *Ibid*

¹⁴⁹ *Ibid*

perpetrate the most heinous crimes. Kwoyelo's trial thus connoted an, albeit vague, opportunity structure to achieve some form of redress or revenge for the wrongdoing that was experienced. The attack on Pagak camp in Amuru in May 2005 stands out as a particularly distressing example of what Kwoyelo was allegedly capable of. Former camp leaders said that during the attack he personally ordered the slaughter of more than twenty women, many with babies on their backs. His victims were taken to a nearby parish and beaten with logs. Most died as a result of their injuries. Camp leaders later found one woman who had survived:

'a person came on bicycle from Amuru side, he said "there is a woman at the junction, she is just crawling". I organized for youth to come to the corner. She had been terribly beaten. She was making these signs, directing us to the place where the women had been slaughtered. At that time, she did not even know that the child she was carrying on her back had been beaten to death'.¹⁵⁰

It is alleged that Kwoyelo commanded that particular massacre in order to punish the female camp residents, who had recently greeted defected LRA fighters into the camp with ululations, a celebratory chant that is common across Acholiland.¹⁵¹

During his trial the media were interested in the presence of Kwoyelo's elderly, barefoot mother in the court room, and the fact that Kwoyelo himself was a diminutive figure, short and slight. This lent credence to the notion of Kwoyelo as child-like and a victim, and sympathetic quotes from his relatives were reported in the media.¹⁵² In the area where he grew up, however, near Pabbo, men and women frowned deeply when his name was mentioned. One community leader explained that:

'even if he is set free, his relatives might accept him but his neighbours who suffered? No, he will not be OK. In Acholi when you kill my relative, then I really think you should be killed'.¹⁵³

The women in particular open their eyes wide, they want people to know what Kwoyelo did to them and their families during the war. 'He was a prominent commander' said one, and 'he abducted our children; killed our children...we have fears that if he returns he will continue to wreak havoc and commit crimes'.¹⁵⁴ A group of men agreed:

'Thomas Kwoyelo makes us really unhappy. We feel so aggrieved by what he did... he is our son but he committed a lot of atrocities here in this place. We are

¹⁵⁰ Key informant interview, Amuru District, 27.09.13.

¹⁵¹ Key informant interviews, Amuru District, 27.09.13.

¹⁵² See Footnote 4

¹⁵³ Focus group discussion (FDG), Amuru District, 09.08.12.

¹⁵⁴ Ibid.

not very happy with him. You have come here and one of the things you notice is that the place is quiet. It is quiet because Kwoyelo wiped away the boys of this area, the able bodied youth, who could be doing a lot activities now'.¹⁵⁵

Some requested longer, private interviews, because, in the words on one woman, 'what Kwoyelo did to me and my family was really unspeakable'.¹⁵⁶

Indeed those respondents who particularised the crimes that Kwoyelo committed, and categorically individuated him, his trial was welcomed, often unreservedly. The legal intricacies of the case and objections on the basis of unfair treatment under the Amnesty Act cut little ice. Those who claim to be victims of Kwoyelo want him ex-communicated from their social and moral worlds by whatever means possible. In Amuru District, a local politician spoke of 'three categories' of people who are 'beyond reconciliation' when it comes to Kwoyelo: those who suffered direct violence; those whose children were abducted, and those who knew of his atrocities. Many people expressed quiet admiration of the restraint the government had shown in keeping him alive and allowing legal proceedings take place. One man said:

'if it were the people who were to have arrested him then I think they would have killed him, but good enough it is the government who did so'.¹⁵⁷

Those who supported the trial also appeared to place a surprising level of trust in the legal process. A former camp leader explained that:

'in my opinion you should use the law against Kwoyelo because as a layman we think he may have committed crimes of killing people and abducting others but according to the law he may have committed other crimes'.¹⁵⁸

In the area from which he hailed elders appeared willing to transfer their traditional disciplinary roles to the GoU, and to allow the Government to act as Kwoyelo's overseer. Not only was he perceived to be a deeply de-stabilising force, his crimes were also understood as too numerous and profound for the local community alone to be able to deal with.

Some hoped that he would face life in prison after his trial; others called for the death penalty. Others expressed some hope that a period of incarceration would allow him to

¹⁵⁵ Ibid.

¹⁵⁶ Key informant interview, Amuru District, 27.09.13.

¹⁵⁷ Focus group discussion, Amuru District, 09.08.2012.

¹⁵⁸ Key informant interview, Amuru District, 27.08.2013.

see the error of his ways and 'learn his lesson'.¹⁵⁹ The argument that his prosecution sent a bad message to those still in the Bush who might be planning to defect was turned on its head: 'no, it sets a very good example to those who have been given amnesty and later went back to captivity to commit more atrocities', explained a group of men near Pabbo.¹⁶⁰ The relationship between trials, incarceration, and reconciliation, is fluid and unsettled, and when people talked about the trial they portrayed a frustrated sense of turmoil about how punishment, compensation, and reconciliation, can and should fit together. This did not preclude certain processes or prioritise one over another; it tried to make sense of the range of options and constraints that people faced in their search for redress. This comment by an elder was representative of this kind of thought process:

'In Acholi, there is a law that says if you kill someone, you should be killed. Then I could forget. Because I would not want to see him walking and my relatives are no-where to be seen. So, he should be put in life prison. Yeah, maybe that would sound better. And government should also find a way of compensating for all the things people lost. In that way a person like Kwoyelo could be forgiven. And then he could come forward for *Mato Oput*. But it is very impossible for him to do that with each victim. That is why I say that the government must provide. If they did, it would then be unfair to put him in prison according to tradition.'¹⁶¹

Thus it was not clear whether people were 'beyond reconciliation' as stated by the local politician in Pabbo or whether traditional and informal processes were beyond capacity when it came to a case like Kwoyelo. The potential of the trial was interpreted in accordance with the concepts of punishment and redress that people were familiar with: death; expulsion from the community; and compensation. People's support for the trial was also linked to a belief that the GoU carried responsibility for ensuring that the process bestowed some measure of tangible and material benefit to the communities affected by Kwoyelo's violence.

Despite support for the trial, people rarely expressed knowledge of, or engagement with, the actual proceedings. There were logistical reasons, such as the expense involved in travelling to Gulu. A more pained and profound response related to the prospective trauma of failed expectations. One man explained how the chance of seeing Kwoyelo

¹⁵⁹ FDG, Amuru District, 10.08.2012.

¹⁶⁰ Ibid.

¹⁶¹ Key informant interview, Amuru District, 27.08.2013.

released would make him ‘feel too bad’.¹⁶² Another knew that even though he felt Kwoyelo should ‘go through a court of law’, he was not under any illusions that the trial itself could help him personally to come to terms with what he experienced.¹⁶³ As a senior community leader he supported the trial, yet also evaded it, and when asked ‘why?’, he answered, ‘because, where should I start from?’. He looked down, gathered his thoughts and continued:

‘when the attack happened, one of the things I remembered was a woman who we only found the ashes and the skull. She was a very active woman, doing income-generating activities, selling fish. When the attack happened she ran to her hut to gather her money before escaping. They locked her in and burnt the hut’.¹⁶⁴

The enormity of what occurred at Pagak in May 2005 was distilled into this one painful story, and somehow, while not directly answering the question, he raised another, far more complex one, about the limited role that legal processes play in healing the trauma caused by what one woman called the ‘unspeakable’ violence that Kwoyelo is alleged to have perpetrated. A local sub-county chief in an area where Kwoyelo was operational explained that:

‘in general terms, we support that trial but the community has developed a resilience and the court issue is a technical issue which the lay man may not comprehend so people get on with their business’.¹⁶⁵

This raises important questions about the relationship between macro-transitional justice processes and micro-level post-war existence, which is explored in more depth in Chapter 9.

Outside of the place ‘from where he grew,’ and away from those areas in Acholiland directly affected by operations that he allegedly commanded, people are far more anxious about the plight of Thomas Kwoyelo. As a man, people ‘de-individuate’ him, and his plight and his trial become abstracted and slotted into a broader narrative of structural violence and inequality between the GoU and the North. The trial no longer represents an opportunity; instead it is framed as spectral and comes to symbolize people’s fears about the refractory nature of ‘distanced’ justice.¹⁶⁶ The focus of most people’s concerns was the uncertainty posed by the seemingly arbitrary decision not to grant Kwoyelo

¹⁶² Key informant interview, Amuru District, 20.08.13

¹⁶³ Key informant interview, Amuru District, 27.08.13

¹⁶⁴ Ibid.

¹⁶⁵ Key informant interview, Amuru District, 20.08.13

¹⁶⁶ Holly Porter uses Gready’s term ‘distanced’ justice to discuss formal state-led processes in the context of post-conflict northern Uganda, see Porter, ‘After’.

amnesty. Because they were unfamiliar with his crimes, cost-benefit calculations about the trial were framed in a completely different way. On the one hand it was feared that the trial would deter those who remain in the Bush from returning, and on the other hand there was concern that those senior commanders who had already been granted amnesty would become nervous and even belligerent. Either way, the Kwoyelo trial disturbed the ground upon which peace was believed to rest.

Interestingly, opposition to the Kwoyelo trial was often expressed with reference to the ICC's role in northern Uganda. This might be because the ICC and the ICD are often conflated in people's minds. The problems for which people blame the ICC are attributed also to the ICD. The key criticism is that the Court is a political tool of the GoU, and will not apply the law equally to both sides of the conflict. In a public meeting in Gulu to mark the ten-year anniversary of the ICC, one young man stood up and said:

‘we are victims of a war. Museveni triggered this and we are still watching the games that are being played. So how is far is the ICC and its arm in Uganda for us? Our relationship with them is like trying to romance with an impotent man whose effort is a wastage of resources’.¹⁶⁷

His solution, which was greeted with cheers from the crowd, was that the ICD should be closed until Museveni is placed in the dock, ‘and then the court can start its work!’¹⁶⁸ Unfortunately, opposition to the Kwoyelo trial is too often framed in cultural terms, as an instinctive African aversion to ‘western’ forms of legal accountability. This criticism by educated Acholis was, however, a direct expression of north-south politics, which had little do to with the idea of the court *per se*, and much more with who is in political control of its operations. According to a local politician, unresolved political tensions between the NRM and ‘the Acholi’ made widespread support for the Court impossible. He explained that ‘there are those here who hate this government and they oppose the court because it is under Museveni. Whenever the government puts a hand *here*’, he said placing both hands on one side of his desk, ‘they feel they should leap *this side*’, he said, as he raised one hand in the shape of an arch and slapped it down on the other side of the table. This kind of argument finds support outside of Acholiland, in other areas of northern Uganda affected by LRA violence, particularly Lango, West Nile, and Teso. A cultural leader from West Nile, for example, saw ‘Acholi’ opposition to the Kwoyelo trial

¹⁶⁷ Participant observation, ‘The ICC ten years on’, Uganda International Criminal Court Coalition Dialogue, Bomah Hotel, Gulu, 5.07.2012.

¹⁶⁸ Ibid.

as a part of an Acholi-wide conspiracy to keep quiet about what happened during the war:

‘Kwoyelo was a sector commander for Adjumani. When I saw him in Garamba I said, you have caused our people too much suffering and he just laughed. They always laugh. In Acholi those people will say “forgive him, he is our son”. Why? It is because they see death as a part of war. So they will say “after all”, he is our son. “After all” is war and they say he was commanded to do it. He was not the one in control. Amnesty? No, he cannot have amnesty. He did not surrender. That man, he should be on trial. That trial is fair’.¹⁶⁹

This comment may not accurately reflect the complexity of different attitudes towards the trial within Acholiland, but gave interesting insight into more politicized understandings of ‘Acholi’ intentions as interpreted by non-Acholi northern Ugandans also affected by the violence.

In most cases, people either individuated or de-individuated Kwoyelo on the basis of their war time experience. Local politicians and leaders, however, made a more informed and calculated decision about how to present Kwoyelo and his trial. Norbert Mao, former MP and District Chairman of Gulu, was one of Kwoyelo’s greatest champions and a promoter of the de-individuating narrative, which painted Kwoyelo as an innocent man who was abducted and forced into terrible crimes against his own will. ‘Above all’ Mao told a journalist in July 2011, shortly after running against Museveni in the national elections that year, ‘Kwoyelo was a child that should have been protected by the government’.¹⁷⁰ Anglican Bishop MacLeod Baker Ochola II, an influential Acholi religious leader and peace advocate, has been another vocal opponent of the trial, and of the ICD in general, arguing that ‘it is wrong to bring Kwoyelo to Court. That division of the High Court will polarize people of Uganda... our cultural justice system will bring people together’.¹⁷¹ A local politician from Kwoyelo’s area who supported the trial argued that both Mao and Ochola ‘misfire’. ‘Mao’, he argued, ‘should have come and crosschecked with the people here’; and, as for Ochola, he was promoting ‘only one verse of the Acholi reconciliatory set up because traditionally we have very severe punishments in Acholi’.¹⁷²

¹⁶⁹ Author interview with cultural leader, Adjumani District, 05.09.2012.

¹⁷⁰ Quoted in Matsiko, ‘Kwoyelo’.

¹⁷¹ Participant observation, ‘The ICC ten years on’, Uganda International Criminal Court Coalition Dialogue, Bomah Hotel, Gulu, 5.07.2012.

¹⁷² Key informant interview, Amuru District, 27.08.2013.

Indeed politicians and government officials who support the trial *individuate* Kwoyelo. They recount his crimes, and go into detail about his character and his refusal to surrender. Using a similar logic to his alleged victims, his wrongs are defined by circumstance rather than by 'law'.¹⁷³ As a local NRM politician noted,

"The Government also takes into consideration that person in the Bush. You see, if someone is active, government decides that person can still be dangerous when at large. These are State things. That is how you can weigh how likely they are to reform. Like Banya, he was just a Mzee, moving around the Bush, he was never implicated in orders. But the Kwoyelos with the community here, it is all muddy. His footmarks are tainted, it is bloody. That is what Government does, to find out these things. I don't think if you were sitting in State house you would say, oh, lets set that one free'.¹⁷⁴

Conflating the judicial and executive arms of the State, he argued that 'the Government' had to make decisions about who to prosecute on the basis of prospective deterrence. Kwoyelo himself was likely to have been aware of such calculations because in late December 2013, after over four years in pre-trial detention, he gave his first public interview to a journalist from the Government-sponsored *New Vision* Newspaper. He said that he had benefitted from a 'peacemaking and reconciliation programme' and now 'realised my past mistakes'.¹⁷⁵ In a message directed to President Museveni he stated his commitment to 'work with the Government at all cost' and pledged that 'once considered for clemency, I swear I will never go back to rebel activities'.¹⁷⁶ It is not clear whether Kwoyelo's lawyers advised him to make this statement or whether he simply 'gave a passing journalist some good copy'.¹⁷⁷ It is unlikely to have escaped his attention that senior LRA commander, Caesar Acellam, who was reportedly captured on 12 May 2012, was not handed over to the police, but instead has undergone what the UPDF 4th Division Intelligence Officer, Major Patrick Bugiriwa described as 'rehabilitation':

'if the higher command feel that he has been rehabilitated enough to join the UPDF ranks then why not, we believe people can change as we have a process of continuous sensitization and brainwashing so as he becomes a better person... the UPDF system that we have been using of brainwashing rebels will never lead to any betrayal'.¹⁷⁸

¹⁷³ Dresh, 'Legalism', p.20; p.34.

¹⁷⁴ Key informant interview, Amuru District, 27.08.2013.

¹⁷⁵ 'Kwoyelo Pleads for Clemency', *New Vision*, 30.12.2013, <http://www.newvision.co.ug/news/650959-kwoyelo-pleads-for-clemency.html> (accessed 30.12.2013).

¹⁷⁶ Ibid.

¹⁷⁷ Paul Bradfield, 'The latest twist in the case of Thomas Kwoyelo', 03.01.2014. <http://beyondthehague.com/2014/01/03/the-latest-twist-in-the-case-of-thomas-kwoyelo/> (accessed 05.01.2014).

¹⁷⁸ 'If Rehabilitated enough, LRA's Acellam is welcome to Joint UPDF – 4th Division Intelligence Officer', Acholi Times, Monday 08 July 2013, http://www.acholitimes.com/index.php?option=com_content&view=article&id=1538:if-rehabilitated-

The alternate fate of senior LRA commanders who were captured or surrendered after Kwoyelo was not just a legal anomaly, it was indicative of a political and military approach that eschewed defined rules of engagement when it came to conflict-related crimes, and evaded the formulation of policy that encouraged such rules. Thus what Nouwen called 'no policy' in relation to the Kwoyelo trial, is the product of an entrenched political culture that resists subordination to the Law, and believes that 'law exists not to limit the state but to serve its power'.¹⁷⁹ The transitional justice conception of the Ugandan political leadership is not normative, directional or linear. It is reactive and pragmatic, and its fate rests ultimately with the President, who, as one of his advisors pointed out, does not see things these things as 'permanent', because 'laws and even the constitution...these are living documents not static ones, we need to revisit them as situations develop'.¹⁸⁰

Conclusion

Donor capacity-building interventions for conflict-related criminal justice processes have had a modest effect in the sense that new laws have been drafted (ICC Act), law-related institutions (ICD) have been built, and staff have been trained. But technical support in this area has not resulted in a tangibly different interpretation of the role of the law, or the role of the judiciary, amongst entrenched political elites of the sort envisaged by the dominant liberal transitional justice paradigm. As one local politician in Gulu explained, 'Uganda could compete in the World Cup of laws', it is the implementation that is the problem.¹⁸¹ In the post-Juba rush to fund the Court - to see concrete evidence of a transitional justice policy in motion - donor money and donor pressure built a war crimes court that was politically and structurally incapable of delivering a fair trial by international standards. But, as this chapter has argued, political elites were not sufficiently engaged to capitalize on this new court in the way that critical observers might predict. The court itself was not instituted as a theatre of state power; instead, it became the arena within which a rather clumsy battle between different state institutions

[enough-lra-s-acellam-is-welcome-to-join-updf-4th-division-intelligence-officer&catid=8:acholi-news&Itemid=101](#) (accessed 10.07.2013).

¹⁷⁹ Carothers, 'Revival', p.5

¹⁸⁰ Author interview with presidential advisor, Kampala, 04.05.2012.

¹⁸¹ Author interview, Douglas Peter Okello, Gulu District Speaker, 07.08.12.

played out. It is true that the prosecutorial strategy of the DPP was a reflection of the structural power asymmetries between the GoU and the ‘defeated’ LRA, but the Kwoyelo trial did not really produced any winners. The political leadership, meanwhile, has never articulated a coherent government position, or really even an expression of concern, about either the ICD or the tensions between prosecution and amnesty that its first trial exposed so clearly. The transitional justice conception of donors working in the area - the idea that peace, democracy and rule of law will be strengthened through institutional capacity building - is a hostage to circumstances. The formal apparatus of donor supported transitional justice structures exist largely, as one lawyer put it, in ‘cyber-space,’ exogenous to the everyday realities of the Ugandan political system.¹⁸²

At the same time, as this chapter has argued, the ICD should be understood as more than a legal institution and the first war crimes trial should be understood as comprising more than just a set of legal arguments and judgments. In communities affected by LRA violence, people either ‘individuated’ or ‘de-individuated’ Thomas Kwoyelo based on their own war time experiences. The different representations of the defendant that emerged and the varying conceptions of the ‘justness’ of the trial highlighted the complicated nature of victimhood in the Acholi context. But schematic representations of Kwoyelo were also used by political actors, both at the local and national level to ‘compete for attention and identification from different parts of the audience’ in ways that were essentially detached from the legal aspects of the process.¹⁸³ Political support for and opposition towards Kwoyelo’s prosecution and detention were rooted in the logics of war, political identity and political power and this narrative shaping eclipsed the ‘purely legal outcomes’ of the trial.¹⁸⁴

¹⁸² Author interview, Ugandan lawyer, Kampala, 10.07.2012

¹⁸³ Wilkes, ‘Staging’, p.146.

¹⁸⁴ Wilkes, ‘Staging’, p.119.

7. Selecting tradition and forcing forgiveness? Mediated reconciliation agendas in Acholiland

Introduction

In discussions about transitional justice in northern Uganda, distinctions are commonly drawn between JLOS-led, donor-driven formal conceptions on the one hand, and ‘local’ conceptions on the other.¹ Since the late 1990s the Acholi leadership – political, religious, and cultural – have promoted ‘local approaches’ and presented them as a morally superior alternative to ‘external’ systems of justice.² The logic behind these approaches is informed by the complex war and now relative peace that the Acholi inhabit. This was a conflict in which ‘victims and perpetrators often trade(d) places...each side ha[d] a narrative of victimhood’ and now, in the aftermath of the conflict and displacement, they have to find a way of living together again.³ Advocacy around ‘local approaches’ to transitional justice has centered on the restorative possibilities of two processes: traditional Acholi reconciliation techniques, and Christian forgiveness. The two processes are conceptually distinct, but advocates and scholars often conflate them, or create linkages between the two.⁴

Groups promoting forgiveness and reconciliation – most notably religious leaders under the Acholi Religious Leaders Peace Initiative (ARLPI) and ‘traditional’ leaders, under the Acholi cultural institution, the Ker Kwaro Acholi (KKA), have engaged closely with transitional justice discourse in their advocacy.⁵ The promotion of forgiveness and reconciliation at the communal level has also been associated with the local government administered District Peace and Reconciliation Teams (DPRT), particularly in Gulu and

¹ In practice of course, the distinction is not a neat one and the Amnesty Act in particular appears to fall somewhere in the middle of the divide.

² In this they have been supported and sometimes coached by national NGOs and donors. See Bradbury, ‘Overview’.

³ Mahmood Mamdani, ‘The Logic of Nuremberg’, *London Review of Books*, 35:21 (2013), pp.33-35.

⁴ See for example, Amy Finnegan, ‘Forging Forgiveness: Collective Efforts Amidst War in Northern Uganda’, *Sociological Inquiry*, 80:1 (2010), pp.424-447 p.432; Daniel Philpott, ‘The Justice of Forgiveness’, *Journal of Religious Ethics*, 41 (3), pp.400-416; Charles Baguma, ‘When the Traditional Justice System is the Best Suited Approach to Conflict Management’, *Journal of Global Initiatives* 7:1 (2012); ‘Uganda: The Challenge of Forgiveness’, *Fetzer Institute*, (April, 2012) <http://www.fetzer.org/our-work/projects/uganda-challenge-forgiveness> (accessed 07.08.2012).

⁵ The Mato Oput Project, *Community Perspectives On the Mato Oput Process*, (October 2009) p. 4; See for example, *Navigating Justice, Reflections on the Role of Acholi Traditional Justice*, Report of the Gulu Seminar of the Ker Kwaro Acholi, (February 2009); Wade Snowden, *Pursuing Peaceful Means to End the LRA Conflict: Recommendations by the ARLPI*, (April 2010)

Nwoya districts, where they are more organised. There are also several prominent NGOs and humanitarian organisations that have engaged in advocacy around 'local approaches'. Most notable are the Justice and Reconciliation Project (JRP) and the Refugee Law Project (RLP). The Amnesty Commission and the organisations running the receptions centres – those responsible for 'reintegrating' former LRA members back into their communities - have also been active promoters of forgiveness and reconciliation.

This chapter focuses on elite articulations of what local responses to mass atrocity *ought* to comprise, as opposed to what they *actually* look like in practice (the subject of the final chapter). Throughout the chapter, a particular point is stressed: although there are important epistemological and practical distinctions between the traditional justice and the Christian forgiveness agendas, both represent a heavily mediated and sometimes coercive 'ideal type' response to mass atrocity in northern Uganda. Much has been written about the evolution of an externally supported traditional reconciliation agenda in Acholiland.⁶ Yet we know very little about how this operated in practice, and how it has been experienced by communities affected by the violence. The first part of the chapter focuses on the political construction of the KKA; local attitudes towards this form of public authority; and experiences of externally supported rituals conducted under its auspices. It argues that the KKA, as an institution, does not enjoy widespread legitimacy or credibility in Acholiland and that the chiefly authority system is widely regarded as external to local practices and understandings of justice, social repair and reconciliation.

To some extent, this analysis provides additional empirical depth to the findings of influential scholars, most notably Adam Branch and Tim Allen, who have, in the past, provided comprehensive critiques of 'ethnojustice' narratives and donor-driven traditional justice in northern Uganda.⁷ This analysis also, however, departs from, and challenges these existing critiques in two fundamental ways. Firstly, in demonstrating clearly that external attempts to create a 'traditional' justice system in northern Uganda have not been successful in practice – largely because people have chosen not to use it - it restores a greater sense of agency to Acholi people. The somewhat dubious argument that external support for a traditional justice agenda would be directly responsible for a

⁶ See Bradbury, 'Overview' and Latigo, 'Northern'. For critical appraisals, see Allen, 'Trial', Allen 'Bitter' and Branch, 'Ethno-justice'.

⁷ Ibid.

resurgence in oppressive patriarchy negated this agency and over-stated the extent to which authorities which lack credibility and legitimacy are able to regulate local life.⁸ Secondly, and relatedly, this analysis attempts to create a much clearer conceptual distinction between externally supported ‘traditional’ justice agendas, particularly those mediated by the KKA, and the much wider realm of local practice pertaining to ideas of redress, punishment and reconciliation. To date, the scholarly focus has been too heavily concentrated on the former and the unintended consequence is the implication that beyond a range of externally constructed ideal-type traditional processes, nothing else exists, or, if it does exist, it is somehow tarnished with the same brush. This chapter and following chapter provide analysis not only about the way in which people have reacted to the KKA and its traditional justice and reconciliation agendas, but also about everyday approaches to justice, reconciliation and healing in the context of post-conflict Acholiland. This, it is hoped, will open up new ways of thinking about ‘local’ approaches to transitional justice in northern Uganda.

The second part of this chapter examines the promotion of Christian forgiveness in post-conflict Acholiland. It argues that the form of forgiveness promoted by the religious leadership has been demanding and often unyielding, and should be understood as such. It also explores the different rhetorical devices employed by NGOs and local politicians to encourage forgiveness across the region. The final part of the chapter complicates the rhetoric of these agendas by examining the way in which forgiveness has been enacted in Acholiland; what this tells us about local conceptions of forgiveness; and the implications this has for contemporary inter-communal relationships, in particular between former LRA members and those who have never experienced life in the bush.

Conceptualising forgiveness and reconciliation promotion in the Acholi context

This brief section introduces two important background considerations regarding forgiveness and reconciliation which are fleshed out as the chapter progresses. The first is that in Acholiland, forgiveness has been formally associated with the Amnesty Act.⁹ The Act itself uses the word ‘forgiveness’ to describe its rationale.¹⁰ In Acholi, as is

⁸ See Branch, ‘Ethnojustice’, p.616; 626-7; Allen, ‘Bitter’, p.253.

⁹ See, for example, Jeffrey, ‘Forgiveness’; Finnegan, ‘Forging’.

¹⁰ Amnesty Act (2000)

explored below, the same word *timo-kica* is used to denote both the amnesty and forgiveness. In their comments, some informants described this as a difficult conflation and made the distinction between inter-personal/communal forgiveness and forgiveness as a broader political project. For example, one man in Agago district explained that:

‘Forgiveness is in the hands of the government. It is not for us to decide. But Banya cannot come here....but if he came here there is nothing we can do because the government has given him amnesty. Our view is different – especially for leaders – we feel they should be dealt with. But government disagrees. But these who were abducted, we really do feel bad for these ones but still it is hard. But the government they say, it is you, you the people who want to forgive. Maybe it was subjected to opinion polls or something. We do not know the results’.¹¹

There exists then, a complicated relationship, observed in other contexts too, between political forgiveness, which Andrew Schapp argues ‘bargains away’ the choice of the victim/s to forgive and, what one informant referred to as, ‘natural’ forgiveness, which, as Hannah Arendt famously argued, denotes a degree of agency.¹² In northern Uganda, the involvement of religious leaders and NGOs in the promotion of forgiveness places their activities somewhere along the spectrum of coerced and natural forgiveness and this is examined below.

The other important consideration is that, for the most part, local leaders and NGOs have promoted both forgiveness and reconciliation as *intra*-Acholi processes.¹³ These are theological, psychological and spiritual processes that are expected to take place between LRA perpetrators and their victims, both within and between Acholi communities. The government’s role in the conflict, as both Branch and Allen have argued, is conveniently sidelined and macro-level reconciliation of the type envisaged in the AAR agreements through a truth body is no longer on the political agenda.¹⁴ However, as will be explored below, the conceptual distinction between micro and macro level reconciliation is rarely observed or accepted by people in Acholiland.

¹¹ Author interview, Agago District, 29.08.2012.

¹² Andrew Schaap, *Political Forgiveness* (New York: Cornell University Press, 2001); Hannah Arendt, *The Human Condition* (Chicago: Chicago University Press, 1998).

¹³ The AAR calls for ‘appropriate reconciliation mechanisms’ and the annexure calls for an ‘inquiry into the past’, both imply forms of macro-level reconciliation but this has not come to pass. The RLP promoted a draft National Reconciliation Bill in 2010 but it was not taken up by parliament.

¹⁴ See Allen, ‘Bitter’, pp.242-62; Branch, ‘Displacing’, pp.119-154.

Traditional authorities as the arbiters of transitional justice and reconciliation

As described in Chapters Three and Four, when more than 300 Acholi religious, cultural, and political leaders and diaspora members met in London in 1997 for the *Kacoke Madit* (big gathering) to try to 'generate a consensus for peace and reconciliation among the Acholi', broad agreement was reached on the need to promote Acholi 'unity,' and strengthen 'cultural heritage'.¹⁵ After the meeting, KM commissioned International Alert, a London-based NGO, to produce a report about the views of Acholi 'opinion leaders' on both dialogue with the LRA, and on broader intra-Acholi 'reconciliation' processes. The landmark report, entitled '*The Bending of Spears: Producing Consensus for Peace and Development in Northern Uganda*' was written by Dennis Pain, who was Oxfam's country representative in Uganda from 1984-87. Pain's highly dubious conclusion that 'Acholi traditional resolution of conflict and violence stands among the highest practices anywhere in the world', was a clarion call for international funding for a mediated reconciliation agenda for Acholiland.¹⁶ Central to this would be the restoration of a chiefly public authority structure – now allowed under the terms of Article 246 of the 1995 Ugandan Constitution,¹⁷ and the revival of certain rituals, most notably, *Mato Oput* because, according to Pain:

'all Acholi know that because of the atrocities, particularly against children, since 1994...all involved must go through *Mato Oput* reconciliation.'¹⁸

Mato Oput literally means the drinking of a bitter root of the *oput* tree and there is some evidence that variants of this process were traditionally used in cases of murder or accidental death.¹⁹ There is also plenty of evidence to suggest that at the time Pain made his recommendations, this particular ritual was not in widespread use, and knowledge of its meaning and requirements was weak.²⁰

¹⁵ Bradbury, 'Overview', p.18

¹⁶ Pain, 'Bending', p.2.

¹⁷ The 1995 Ugandan Constitution re-instated the right of Ugandan citizens to adhere to the culture and cultural institutions of the community. Museveni's formal recognition of the traditional leaders and kingdoms was largely an effort to circumscribe their function and role, particularly in relation to the growing power of the Buganda kingdom. See, Nsibambi, 'Restorations', p.47

¹⁸ Pain, 'Bending' p.2; p.110. Pain also recommends the revival of a ritual called 'Gomo Tong', or 'bending of the spears', last performed between the Acholi and West Nilers in 1986. As Allen argues, 'this was a ceremony that occurred at the end of the war, symbolizing the termination of the fighting' between tribes (see Allen 'Trial' p. 165). Pain's idea was to combine *Mato Oput* and *Gomo Tong* reconciliation rites.

¹⁹ Girling for example, writes in quite a bit of detail about *Mato Oput*, see Girling, pp.65-67.

²⁰ Acord, 'Background Papers presented to the conference on peace research and the reconciliation agenda', Gulu, northern Uganda, *COPE Working Paper no. 32* (London: Accord, 2000).

Pain's report sparked donor interest. In January 1999 the Belgian Government provided funding for the international NGO, Acord, to examine the chieftaincy system in Acholiland, and suggest how it might be strengthened and institutionalized in order to carry out Pain's prescriptions.²¹ The first step was to identify the royal lineages of each clan. This was reportedly a fraught and highly complex undertaking given the degree of displacement and social change that Acholiland had experienced since independence, not to mention colonialism and pre-colonial slave raiding incursions.²² Despite concerns expressed by Acord about the capacity and legitimacy of 'traditional' systems, donors liked the idea of channeling support through a defined chieftaincy structure that could promote 'codified' traditional reconciliation methods.²³

The Acholi cultural institution, the Ker Kwaro Acholi, was set up in 2000. The head of the Payira clan, the largest clan in Acholi, was appointed Paramount Chief (*Lamworodi*) and 52 (now 54) clan chiefs were officially recognized and incorporated into the institution. When Payira chief, Rwot David Acana I passed away just prior to his official coronation he was replaced by his son, Rwot David Acana II.²⁴ Because of the security situation, his coronation did not take place until 17 January 2005. President Museveni was in attendance and made a speech warning cultural institutions against 'fragmenting society'. Shortly afterwards he donated the new Paramount Chief a 'double cabin pick up truck worth over sh50m (\$19,000).²⁵ The controversial *Roco Wat I Acholi* report, singled out by both Tim Allen and Adam Branch as a seminal document in the promotion of the 'ethnojustice' agenda, presents a consensual picture of spontaneous adherence to a long-term Payira clan paramountcy.²⁶ But in discussions with non-Payira elders and even Chiefs, it is noted with some chagrin that the Paramount Chief position was originally intended to be 'rotating', but that this has not come to pass.²⁷ The failure of Acana II to relinquish his position has discredited the institution in the eyes of those Acholi who were optimistic about what the KKA might deliver, and has confirmed

²¹ Allen, 'Bitter', pp.244-249.

²² Liu Institute, 'Roco Wat', p.31

²³ See Acord, 'Background'. Codification was one of the key recommendations of Baines, 'Roco Wat' report, and as was discussed in Chapter five, donors provided funds for this.

²⁴ Ocana has spent the last three years in the, studying for a degree, reportedly in business and development at Coventry University.

²⁵ 'Museveni attends Rwot Acana Coronation', 16.01.2005, <http://www.newvision.co.ug/PA/8/12/412440>

²⁶ Liu Institute, 'Roco Wat' p.31. This does not hold true given that in 1999, after the death of Rwot Acana I, the succession of his son to the throne was contested by at least two other clan chiefs: one from the Lamogi and the other from Pajule. source

²⁷ Author field notes, Acholiland, June-October 2013.

Payira desires for hegemony and power amongst those who were already skeptical.²⁸ For many people, the Ker Kwaro Acholi structure is more reminiscent of colonialism than of an ideal, unadulterated past. As one influential elder remarked:

‘Rwots were imposed on people; from way back in colonial times this was the case. Of course, culture evolves, and now you find politicians and donors appointing Rwots.’²⁹

Because it is largely donor funded, the KKA has come under pressure to restructure itself to resemble and operate more like an NGO.³⁰ It has a secretariat headed by a ‘Prime Minister,’ with a programme coordinator and programme officers, and is housed – perhaps fittingly – on a hill in Gulu town in the premises of the old Colonial administration and tax authority.³¹ Like all recognized cultural institutions, it receives five million Ugandan Shillings (roughly \$2000) a month from the central government. In November 2010, on his first official day of election campaigning in the Acholi sub-region, President Museveni commissioned houses to be built for every *Rwodi Moo* associated with the KKA. On the same day, he ‘cut the tape’ at a newly built four bedroom house at the Paramount Chief’s palace in Purongo sub-county, Nwoya district. Museveni used the opportunity to reiterate his position that ‘cultural leaders should not involve themselves in politics’.³² The money to fund the construction of the houses came from the Office of the Prime Minister (OPM) under the Peace and Recovery Development Plan for Northern Uganda (PRDP). A senior staff member in the OPM referred to the KKA chiefs as ‘change agents’ who have been ‘put back into the community’ by the Government of Uganda, but who are still ‘limping’.³³ Despite their relatively modest nature, the breezeblock houses stand out today in rural Acholi settings as a symbol of privilege and exception, and as such they arouse considerable suspicion.³⁴

²⁸ These sentiments were expressed numerous times in interviews with Acholi elders across the sub-region during field work, June-October 2012; July-September 2013. The contested nature of the ‘paramount chief’ role is discussed in Finnström, ‘Surroundings’, p.45.

²⁹ Author interview with elder, Gulu District, 28.07.2012

³⁰ This is evident in the Ker Kwaro Acholi Strategic Plan 2009-2014 (on file with author).

³¹ Finnström, ‘Surroundings’, p.45.

³² ‘Museveni Gives Acholi Chiefs Houses’, <http://www.newvision.co.ug/D/8/12/738566> November 17 2010; ‘Government builds 54 houses for chiefs in Acholi’, <http://www.monitor.co.ug/News/National/-/688334/1160868/-/c1krj9z/-/index.html> May 12 2011

³³ Author Interview with Benon Kigenyi, Principal Assistant Secretary, Pacification and Development, Northern Uganda, Office of the Prime Minister, Kampala, 06.06.12.

³⁴ Author fieldnotes, Acholiland, June-October 2012.

Perhaps it is not surprising that this ‘cadre of chiefs supported by foreign donors and the government’ has struggled to establish legitimacy within Acholi society.³⁵ Not long ago, a group of local government councilors in Gulu ranked the KKA as the most corrupt institution in Acholiland, and even threatened to write to donors to request that they suspend all funding to the institution.³⁶ In November 2013, both Danida and the Netherlands embassy publicly declared that money allocated to the KKA for ‘peace-building’ and ‘reconciliation’ activities had not been properly accounted for.³⁷ Acholi religious and political leaders increasingly distance themselves from the KKA, criticising it on the grounds of inauthenticity. Local politicians who criticise mismanagement of funds at the KKA make a clear distinction between this corrupted institution and the rest of Acholi society. One Councilor, Wilson Chagga, said that across Acholiland there are:

‘Very few instances of corruption and mismanagement of funds but we hear it time and time again from the cultural institution. We need to find ways to stop the mismanagement of funds for the Acholi people.’³⁸

Not long after these accusations were made, the Lamogi clan, the third largest in Acholiland, threatened to break away from the KKA, citing corruption and an impenetrable leadership structure. A Lamogi elder said that the clan had been:

‘Left with no option but to distance itself from an institution that has failed to live according to values and bettering and reintegrating its people.’³⁹

The concern that privileged access to external funds has made the chiefs ‘tools of outsiders seeking economic benefit and political control’⁴⁰ has become particularly marked due to the alleged collusion of certain chiefs in GoU attempts, since the end of the conflict, to grab Acholi land for investment purposes.⁴¹

Charges of corruption confirm fears amongst other Acholi leaders that support for the KKA, as currently constituted, may no longer be a pragmatic option. The tone of

³⁵ Branch, ‘Displacing’, p.159

³⁶ ‘Gulu Councillors Rank Acholi Cultural Institution Most Corrupt in the Subregion’, <http://www.acholimes.com/index.php/acholi-news/1965-gulu-councillors-rank-acholi-cultural-institution-most-corrupt-in-the-sub-region> 06.01.2014

³⁷ Ibid. According to the report, the Dutch ambassador reportedly wrote to the KKA in November 2013, demanding a refund of UGX 230 million (roughly \$92,000) granted to ‘foster reconciliation’

³⁸ ibid

³⁹ ‘Lamogi Clan Threatens Breakaway’ <http://www.monitor.co.ug/News/National/Lamogi-clan-threatens-breakaway/-/688334/2140462/-/60x77ez/-/index.html> 10.01.2014

⁴⁰ Branch, ‘Displacing’, p.159

⁴¹ See for example, ‘Acholi Chiefs confess to receiving bribes to offer Madhvani land’, *Acholi Times*, 25.04.2011, http://www.acholimes.com/index.php?option=com_content&view=article&id=303:acholi-chiefs-confess-to-receiving-bribes-to-offer-madhvani-land&catid=8:acholi-news&Itemid=123 (accessed 15.06.2013).

informants tends to be reflective, as if what is being discussed is a failing or soon to fail experiment. As one religious leader explained:

‘At first we started working well and were working collaboratively with the traditional leaders but now the community are complaining so much at the traditional leaders...Benefits from government tie them up, homes, tokens for support, all this brings compromises where you cannot shout very much because you are benefitting. Their voice has now been silent and they are not so much on the ground. We need to get back our community to the real Acholi culture.’⁴²

Local politicians are similarly disillusioned with the way in which external funds for traditional authorities have undermined alternative strategies for peace-building and reconciliation. According to a 2011 independent evaluation of the Northern Ugandan Transitional Initiative (NUTI), a USAID program which provided funds to the KKA, most of the criticism of the project came from political leaders who:

‘think the resources meant for reconciliation could have been used differently. There is a feeling that the money spent lodging elders, removing them from their communities, and taking them round (against the practice of each chief dealing with the rituals in his own realm), could have been better spent.’⁴³

Indeed this tension also reflected the reality that local government and NGOs have had to compete with the KKA for limited donor and state funds, particularly around the crowded objectives related to peace-building and reconciliation.

A particular complaint amongst local political and religious leaders and certain NGOs was the failure of the KKA to take a proactive stance on the lapsing of the Amnesty Act in 2012. According to one elder and civil society leader who had been integral in organizing the local campaign calling for the re-instatement of the Act, ‘The KKA hesitated. Will this not rub the Government up the wrong way? They did not want to antagonize the Government. They hesitated on dissemination.’⁴⁴ The lawyer advising on the process said that he had to call Acana personally to ‘convince him to support the declaration’.⁴⁵ The KKA leadership privately confirmed this version of events, and the Prime Minister has been open about his preference for accountability over amnesty.⁴⁶ Civil society groups and religious leaders running the campaign worried that the Prime Minister and the Paramount Chief had become so close to the government they were

⁴² Author interview with religious leader, Gulu District, 12.09.12

⁴³ Annina Mattsson, Robert Opio and Emery Brusset, ‘The Rising Tide: Uganda Country Program Final Evaluation’ USAID Evaluation, (2011), p.18

⁴⁴ Author interview with civil society leader, Gulu, 25.06.2012

⁴⁵ Author interview with legal advisor to Amnesty campaign, 18.06.2012

⁴⁶ Author interview with Kenneth Oketta, KKA Prime Minister, 11.09.2012.

unable to campaign on behalf of the ‘children still in the bush’. The narrative of the children still in the bush, the paradigmatic victims of a senseless war, carries enormous rhetorical sway, particularly amongst those who continue support the amnesty. As will be explored in more detail below, the forgiveness agenda which overlaps and emerged in parallel with the traditional justice and reconciliation agenda - albeit spearheaded more by religious leaders - intoned that caring for and about these children is what it means to be Acholi. The idea that the Acholi cultural institution would diverge from the certainty of unconditional amnesty was regarded as an abhorrence that seemed to confirm what appeared to be growing discourse about the *un*-Acholiness of the KKA.

Political leaders have used this ‘un-Acholi’ rhetoric to critique the ostensible professionalisation and institutionalisation of the KKA. While there is acceptance amongst political leaders and civil society that ‘development-speak’ and what Richard Wilson refers to as ‘human rights talk’ are the language of power and money.⁴⁷ There has also been a general dissatisfaction with the failure of the KKA to insulate itself from this and provide a different kind of leadership. For an institution whose legitimacy within Acholiland was always contested, one of the main criticisms of the KKA has been that it is ‘just another NGO’.⁴⁸ Accusations of corruption (both material and spiritual), laziness and detachment have been linked to a broader lamentation that somehow Acholi traditions and cultural practices, in general, have been undermined by the decision of the KKA to allow its programs to become so heavily mediated by donor priorities. Writing in 1999, Mark Bradbury pointed out that ‘for many, cultural revival is about ‘social reconstruction’ but also a means to establish a distinctive Acholi political voice and identity.’⁴⁹ The LCV Chairman, the most senior local politician in Gulu, described a feeling of disillusionment:

‘What is the meaning of going to NGO workshops, of taking money to buy goats for ceremonies? How do you facilitate and pay cultural leaders when it is their responsibility to do these things? What if the money stops? Will they stop? It is monetizing the activities of cultural institutions and I have told Rwot Acana that he needs to do more to stop the KKA from being run like an NGO. Structures such as project officers do not exist in the traditional institutions. Project

⁴⁷ Richard Wilson, ‘Tyrannosaurus lex: The anthropology of human rights and transnational law’ in Mark Goodale and Sally Engle Merry (eds.), *The practice of human rights: Tracking the law between the global and the local* (Cambridge: Cambridge University Press, 2007), pp. 342-368.

⁴⁸ This was a quote given by the LCV during an interview on 10.09.2012 but it is representative of broader attitudes.

⁴⁹ Bradbury ‘Overview’ p.18

coordinators are now more important than the traditional chiefs. Right now they are just an NGO and people have lost confidence.’⁵⁰

A well-respected elder shared these feelings:

‘The Ker Kwaro Acholi is a sad story. That cultural institution and its true value and impact has been eroded and overtaken by imposed structures. There is a crisis in traditional leadership.’⁵¹

Frustration centered on the fact that the KKA had not achieved a distinct logic of its own. Rather than having a pluralizing effect on the regulation of Acholi society, it became just another expression of the NGO-ification of administration in northern Uganda. Whether it was government enticement to promote state interests or NGO/donor pressure to conform, the KKA was seen to be influenced too easily by centralizing and homogenising discourses, and failed to offer the possibility of a different and meaningful form of post-conflict adjudication.⁵² These findings challenge Branch’s argument that external support for Acholi chiefs ‘has the potential to silence those who do not identify with this revived male authority.’⁵³ This has not played out in practice, partly because external support itself appears to have de-legitimated this form of public authority.

This links to another observable tendency, which was that people often judged the functioning of the KKA against its own rhetoric and inflated discourse. The efficacy of KKA chiefs and the organization as a whole was measured against the ‘pristine golden age’ type criteria of the ethnojustice narrative, and found wanting. It was common to hear people complain that Chiefs could be seen in restaurants and discos around Gulu town. People found it hard to reconcile these modern tastes with a narrative that emphasized the majesty and authority of traditional rulers. In interviews with local political leaders (mainly at the LC1 and LC2 levels), and elders across Acholiland, the same issue arose repeatedly. It was common to hear remarks like these:

‘There is a problem. You see, in the olden days the traditional chiefs were really respected, they don’t get salary but people they did take them some food there... They are always receiving visitors. So the people did take them foods like sim sim. When they go hunting, they always bring meat. But one of these days, the Chiefs have also become a nuisance. You now find them all around town in restaurants even discos. They are being paid salaries by the government; the government is building them houses. They are not supposed to handle politics

⁵⁰ Author interview with Martin Ojara Mapenduzi, LCV Chairman, Gulu District, 10.09.2012

⁵¹ Author interview with James Latigo, Gulu, 04.07.2012

⁵² Wilson writes about pluralisation and centralization in ‘Tyrannosaurus’, p.348-9

⁵³ Branch, ‘Ethnojustice’, p.626.

but the government is now giving them cars, money, like the leader of the chiefs is getting about 5 million shillings from the government! The NGOs give them help too, like certain NGOs have distributed bicycles for the chiefs... Even if people are suffering the Chiefs don't come and tell the government that people are suffering. The Chiefs are just quiet because they are being pocketed by the government.⁵⁴

The ideal traditional justice narrative depicted the chiefly authority structure in an unsustainably 'ideal' way. It had created a rod for its own back, and in many ways the KKA became an easy scapegoat for general disillusionment with post-conflict recovery in northern Uganda.⁵⁵

Role of the chiefs in traditional justice and reconciliation

External support for the implementation of a traditional justice and reconciliation agenda, argued Tim Allen, is 'premised on the assumption that local rituals performed under the auspices of chiefs would, in some undefined way, lead to social reconciliation'.⁵⁶ But as the preceding section has argued, the authority of these chiefs and of the KKA in general has been highly contested, and challenges to their legitimacy and spiritual and political authority impacted on this particular conception of transitional justice.

Reconciliation is usually translated into Acholi as '*Roco Wat*', which means to restore social relationships. Finnström cautions against overly romantic definitions, and has a minimalist interpretation based on his own fieldwork, arguing that it equates to 'acceptance of the necessity for social interaction'.⁵⁷ For this to be possible after wrongdoing, there normally needs to be some combination of acknowledgement, reparation, apology and often 'restorative punishment' too.⁵⁸ Porter's concept of 'social harmony' encapsulates what most people envisage 'reconciliation' looking like in Acholiland. She describes this as a 'state of normal relations among the living and the dead, linked to an idea of cosmological equilibrium, and a social balance of power and

⁵⁴ Author interview with elder and former Sub-County Chief, Bur Coro, 26.07.2012

⁵⁵ For an example of this disillusionment see, Advisory Consortium on Conflict Sensitivity (ACCS), *Northern Uganda Conflict Analysis* (September, 2013).

⁵⁶ Allen, 'Bitter', p.248.

⁵⁷ Finnström, 'Surroundings', p.154.

⁵⁸ Daniel Philpott, 'Reconciliation: An Ethic For Responding to Evil in Global Politics', in Rennee Jeffery (ed.) *Confronting Evil In International Relations: Ethical Responses of Moral Agency* (New York: Palgrave Macmillan, 2008), pp.115-49.

moral order.⁵⁹ ‘Social harmony’ here describes a settled state of affairs in which society can function, rather than a normative category. An important point, as Clark notes in the context of Rwanda, is that reconciliation is a ‘process’ as well as an ‘end-point.’⁶⁰ *Mato oput* attracted so much attention initially because proponents portrayed it as a ‘reconciliation ritual’. In actual fact, it is the long – sometimes months or years long – negotiation process leading up to the performance of the ritual itself, which is the process by which relationships are restored and made meaningful again.

Traditionally, the *Rwot Moo* would not have been directly involved in many of the rituals that donors have funded the KKA to carry out since 2005. In an interview with a chief of one of the Payira sub-clans at his PRDP funded house near the edge of Murchison Falls National Park in Purongo, he struggled to recall how *Mato Oput* was carried out and said that he had yet to witness a war-related ceremony.⁶¹ He got up from his seat and came back with a file thick with notes from NGO meetings and ‘trainings’ he had attended: they included instructions on everything from ‘women’s rights’ to alternative dispute mediation (ADR) guides. Other interviews betrayed a similar lack of knowledge and lack of confidence on the role originally ascribed to the KKA by donors and others. One NGO staff member who worked closely on reconciliation and transitional justice programmes, recounted how the Chief of Patiko had requested her presence as a ‘technical adviser’ at a meeting with local people about traditional cleansing processes. She responded by telling him, ‘but you are the ones who are supposed to know these issues! I do not know these issues so why should I be there?’⁶²

The debate about *Mato Oput* as a form of post-conflict reconciliation in Acholiland remains largely theoretical. In 2013, in the fifteen years since the publication of Dennis Pain’s report, the KKA could only list five *Mato Oput* ceremonies conducted under their auspices in relation to the LRA conflict.⁶³ Three were conducted in Pader Town, and the

⁵⁹ Porter, ‘Rape’, p.13.

⁶⁰ Clark, ‘Justice’, p.44.

⁶¹ Author interview, Rwot Otto Alex, Purongo, 15.08.2012. It was explained that because the current Paramount Chief is also the Payira Chief, a sort of deputy chief was appointed to preside over the Payira clans.

⁶² Author interview with senior NGO staff member, Justice and Reconciliation Project, Gulu, 24.07.2012

⁶³ Author interview with Kenneth Oketta, Prime Minister, KKA, Gulu, 11.09.2012. Enquiries about how many *Mato Oput* ceremonies have taken place under the auspices of the KKA for non-war related crimes reach a dead end very quickly. In an author interview, one programme officer was insistent that ‘this information is very confidential’ but did not explain why. In another author interview, the Prime Minister was less obstructive, acknowledging that record keeping had been poor and that the numbers might exist at the level of the chief but have never been checked or collated. Anthropologists Holly Porter and Sverker

other two took place in Lamogi, in Amuru District. They were followed closely in a documentary film made for Al-Jazeera called 'Bitter Root'.⁶⁴ The documentary portrays the sense of uncertainty that attended the process as it was expanded to cover complex war related crimes. All five were cases in which former LRA combatants approached their respective *Rwodi Moo* and requested the initiation of the *Mato Oput* process.

Fifteen years on from the publication of Pain's report people remain divided on *Mato Oput*. Even the most ardent supporters of the process are resigned to the fact that the right conditions are not in place to allow *Mato Oput* to become an effective intra-Acholi reconciliatory practice on a mass scale. The structural impediments are too severe. According to elderly informants, those who conducted *Mato Oput* in the past for murder, the offender needed to initiate the process and was required to provide some detail of what took place: who they killed, and how. This may have been possible in isolated murder or manslaughter cases but would prove much harder in the context of a 20-year war which spread throughout much of northern Uganda. In any case, as many informants explained, an admission of guilt was highly unlikely in today's circumstances. Confessing to a crime exposes you, and cannot guarantee your security or impunity. Whether rational or not, people were afraid that they would be taken to the ICC or to the War Crimes Court, or that they would face revenge attacks from their victim's family or clan members. Secondly, few families could provide compensation, and unless it was substantial, the victim's family would be unlikely to accept the initiation of the process.

Indeed there was a strong sense across the different research sites that ritual alone, in the absence of significant material compensation, was not sufficient. As a senior member of staff in the Gulu District Reconciliation and Peace Team (DRPT) explained:

'Mato Oput is not really happening. People just decided well, it's OK but it's not very practical. Others would say, someone has killed my father and you expect me to carry that Calabash and drink from it? We were questioned a lot when we

Finnström both note that that during their extensive field work they came across one one Mato Oput ceremony, but neither were for 'battle related deaths.' See Porter 'Rape' p.144; Finnström 'Surroundings' p.105. The Lui Institute 'Roco Wat' report gather information from respondents about 49 Mato Oput ceremonies apparently conducted between 2000-2005. Nearly all of them are for murder and manslaughter committed before 1990 and the records are incomplete, p.91-94.

⁶⁴ 'Bitter Root', Al Jazeera, <http://www.aljazeera.com/programmes/witness/2011/10/20111012152024670219.html> 28.06.12

visited the communities to promote Mato Oput and in the end it just did not pick up.’⁶⁵

Even within the Ker Kwaro Acholi itself there was skepticism. According to the Prime Minister:

‘the magnitude of atrocities is far beyond what traditional processes are capable of dealing with. The current population has never come to terms with this sort of practice. This is the first time people have experienced it. We are using traditional methods in a modern situation. You can traumatise them even more with traditional methods of compensation because we are now in a monetary system. So people say – you say my brother is worth only two heads of cattle? We need money for the orphans; we need school fees.’⁶⁶

In Odek sub-county, near to Joseph Kony’s birthplace, a group of men and women explained that *Mato Oput* was uncommon in the area since the conflict ended: ‘*Mato Oput*’, said one:

‘is when you really know that you killed somebody and you want to reconcile. But here it was a general thing and it is very hard. So it did not happen. It was not appropriate.’⁶⁷

Thus the idea that *Mato Oput* could be transformed into a comprehensive system of post-conflict traditional justice under the auspices of the KKA remained a distant and contested prospect.

Numerous other ‘traditional’ processes aimed at broader intra-Acholi reconciliation have been funded since the mid-2000s. Catholic Relief Services (CRS), International Organisation of Migration (IOM), Caritas, and UNDP were among the organisations involved in supporting programmes such as ‘traditional cleansing’ and Chief’s Tours, particularly from 2004 onwards.⁶⁸ In discussions with people in Acholiland, external support for these traditional practices was usually associated with USAID and the two consecutive peace-building programmes it funded. The first was the Northern Uganda Peace Initiative (NUPI), launched in 2004, which included within its mandate the strengthening of ‘intra-Acholi’ reconciliation processes.⁶⁹ This was followed by the

⁶⁵ Author interview with Goretti Okech, Community Development Officer, Gulu District Council, 31.06.2012

⁶⁶ Author interview with Kenneth Oketta, Prime Minister, KKA, Gulu, 11.09.2012

⁶⁷ Author led discussion group, village near Odek sub-county, Gulu District, 26.07.2012

⁶⁸ A range of donors and NGOs supported these processes. They include USAID (under NUPI and NUTI); Caritas, IOM, CRS and UNDP, Danida, World Vision, Gusco, Concerned Parents Association (see, for example, Liu Institute records, ‘Roco Wat’ pp.96-7, which point to 31 funded ceremonies taking place between 2003-5).

⁶⁹ NUPI was initially launched with the aim of providing technical assistance to prepare the GoU Presidential Peace Team for the peace talks with the LRA. By early 2005, it had been revised – in

Northern Uganda Transition Initiative (NUTI) in 2008, which continued to provide support in this area. These donor-funded traditional ceremonies were largely performed at a communal level and they varied in purpose. Sometimes the ceremonies were conducted during mass burials, at other times the function was a more general ‘cleansing of the dirt in the community.’⁷⁰

A particular grievance amongst communities has been the way in which external funding has distorted traditional practices and compromised their meaning. Examples were given of instances in which practices were re-shaped in a way that no longer made sense. Traditional cleansing rituals, for example, were often misleadingly infused with forgiveness and reconciliation language. One former LRA combatant who now runs a support group for formerly abducted persons just outside Gulu town recalled a NUPI funded mass cleansing ceremony which involved a common welcoming home ceremony called *nyono tong gweno* (‘stepping on the egg’) which is undertaken when someone who has been away from a long time returns to their household. But this ritual was expanded. It was even mis-labelled *Mato Oput* and it was expected carry the reconciliatory function normally associated with the climax of that process.⁷¹ The problem, according to him, was that this was contrary to the norms of the community, which demanded a process of acknowledgement, negotiation and dialogue and compensation before a perpetrator can be fully reconciled with the community. ‘What happened’, he explained:

‘was part of a project fund, but under true custom, the perpetrator clans are supposed to contribute goats and chickens. When money is generated from outside it seems artificial and lots of people did not turn up. Under proper procedures, the clan of the victim and the clan of the perpetrator have a process in which they sort out how they will proceed. I know many people – even some prominent ones around who perpetrated Lukodi⁷², and those persons did not turn up. Families want to make amends but they understand that what NUPI was doing was superficial.’⁷³

accordance with the shift in US policy - to include the strengthening of ‘intra-Acholi, Regional and National Reconciliation processes’. This included a Chief’s tour, ‘grass-roots’ reconciliation activities and support to traditional ceremonies. The program ran until April 2007 under the auspices of a contractor called PADCO. A second USAID programme, NUTI, was then launched and also included support for these activities and was run under the auspices another contractor, Casals & Associates Inc, and ran from 2008-2011. See ‘Mattson et. Al ‘Rising’ and Stefan Jansen et. al ‘Evaluation of CRD and NUPI, USAID Uganda’, (July 2007) p.30 (on file with author).

⁷⁰ Liu Institute ‘Roco Wat’ p. 96-7

⁷¹ Indeed NUPI referred to all of the 54 such ceremonies it funded across the region as *Mato Oput*. See Latigo, ‘Northern’, p.105.

⁷² An LRA massacre took place in Lukodi on 19 May 2004, it is estimated that 60 people were killed when the LRA raided Lukodi IDP camp.

⁷³ Author interview, Bungatira, Gulu District, 25.07.2012.

Part of the problem people identified with the mediated, externally supported ‘traditional’ rituals, particularly those that aim to reconcile the living, was their hasty transmutation into ‘forgiveness rituals.’⁷⁴

This has created suspicion in communities about the intentions of the Chiefs who take donor money to carry out practices in a way that people feel is inappropriate. As many informants explained, traditionally it was not the role of the Chief to conduct ceremonies like the ‘stepping on the eggs’, which were carried out at the level of the household. Under donor supported programmes, it was being done at a communal level, often under the auspices of a Chief, creating a perception that social practices were being subverted in a way that compromised their utility and broader purpose. One informant complained that, ‘those NGO projects are not correct and the chiefs are growing them, saying ‘we need money for eggs’, ‘we need money for goats’.⁷⁵ The concern that Chiefs were benefiting financially from the distortion of traditional practice was widespread. Another informant explained:

‘It is the NGOs like Caritas who are involved in these things. They give the traditional chiefs money to buy eggs and you know in Uganda, eggs these days, even though it is only 1000 shillings, these chiefs will say, no, it is 10,000 shillings! So that is also a way, these days, that those chiefs are eating.’⁷⁶

In particular cases, the role or perceived role of external interference and its distorting consequences, was even more explicit. A prominent political leader and elder in the eastern part of the sub-region, who also described himself as a ‘cultural consultant’, recalled how in March 2012 he was contacted by an organisation based in the US which offered to fund and document a reburial ceremony for Luigi Obol, the late father of Joseph Kony.⁷⁷ The idea was to exhume him from St. Joseph’s Cathedral in Gulu, where he had been buried during the war, and to re-bury him at his ancestral home, near Odek sub-county. According to the elder, and corroborated by reports in the Acholi Times,

⁷⁴ Allen, ‘Trial’, p.166

⁷⁵ Author led discussion group, near Omot sub-county, Agago District, 02.08.2012

⁷⁶ Author interview former Sub-County Chief, Bur Coro, Gulu District 26.07.12

⁷⁷ Author interview with David Okidi Lumedo, 10.08.2013. My informant could not remember the name of the NGO but his testimony matches (in date and location) two stories that appeared in the Acholi Times. In those stories, the Acholi Times names two US NGOs as the ‘Starky Foundation’ and ‘Wondros Productions’. During this period, the Starkey Hearing Foundation was carrying out a project in Gulu and Wondrous Productions is a film production company that has in the past documented the Starkey Hearing Foundation’s missions. The Starkey Hearing Foundation, however, denies any involvement in what happened (author email communication).

the aim of the 'US NGO' was to 'interlink' the reburial with a *Mato Oput* ceremony between Kony's clan and the rest of the Acholi.⁷⁸ He noted that:

'The Americans came with a huge misconception about *Mato Oput* because according to them, exhuming and burying the father of Kony: it would reconcile the clan of Kony with all other clans.'⁷⁹

This, he argued, caused 'a lot of bitterness' because, in his words 'they were taking a cultural way of doing things, getting it wrong, and calling it tradition'.⁸⁰ But his objection was less to do with the way in which actual practice was being re-shaped and more to do with the political implications of what was being proposed. He rejected the interlinking of the reburial of Joseph Kony's father with *Mato Oput* between Kony's clan and the rest of the Acholi because such a process would fundamentally misrepresent the nature of the war. 'How' he asked,

'can you reconcile the Acholi without including the government role? It is the government that must pay blood feud and reconcile with Acholi clans through *Mato Oput*'.⁸¹

Reports in the *Acholi Times* reveal that people in the community around Odek felt the same way. Luigi Obol's brother was quoted as saying:

'we are not going to be forced into *Mato Oput*...It was the government of Uganda and the LRA rebels who were engaged in a rebellion, not us.'⁸²

The incident highlighted something important. In the areas affected by LRA violence, *Mato Oput* was rarely talked about in the way that the 'ethnojustice' narrative supposed. People rarely referred to it spontaneously and, as was described above, were equivocal about the role it might play in restoring communal social relations. What was more apparent was the way in which the processes that attend traditional concepts of reconciliation: acknowledgement, dialogue, and compensation, were celebrated, and then refracted as a checklist against which the Government of Uganda scored miserably.

⁷⁸ 'The Remains of Kony's Father Buried in his ancestral home', 19.03.2012
<http://www.acholitemes.com/index.php/8-acholi-news/28-the-remains-of-kony-s-father-reburied-in-his-ancestral-home>

⁷⁹ Author interview with David Okidi Lumedo, 10.08.2013

⁸⁰ *ibid*

⁸¹ *ibid*

⁸² 'Kony's clan reject being forced into *Mato Oput* by US NGO'
<http://www.acholitemes.com/index.php/8-acholi-news/57-kony-s-clan-reject-being-forced-into-mato-oput-by-usa-ngo> 26.03.2012

The sentiments expressed by the community in Odek were not unusual. The idea that national level, political reconciliation was just as important and pressing as inter-communal reconciliation was widespread. One former Sub-County Chief explained:

‘the people, they want the truth, the Acholi want the government to tell the truth, why don’t they come and make a real *Mato Oput*. If they can do that then within one year you would see a complete change of attitude. Even me, I would forgive.’⁸³

In a rural part of Gulu district, a group of elders, extrapolated from some of the concepts related to *Mato Oput*, and applied them to the relationship between the Acholi and the Government of Uganda:

‘the tensions that are there, it is between us and the government. According to our tradition, in the absence of compensation, the perpetrator will be looked at in a bad light and you will be seen as a disgrace, people can conspire to do bad and seek revenge against you. It is important that this has to be sorted out. We can extend this cultural belief from the individual level to the level of government.’⁸⁴

In most discussions, the concept of *Mato Oput* was used to describe a need for political efforts at peacemaking. The insularity of the ‘ethnojustice’ narrative was actively resisted. People talked about *Mato Oput* in a conventional sense as being a process that takes place between a perpetrator’s clan and a victim’s clan and then seamlessly extended that concept to the need for acknowledgment, compensation and reconciliation between the government and the Acholi.

To conclude this section, Sverker Finnström was right when he wrote that it is not for scholars to delineate ritual,⁸⁵ but, as described above, it is possible to identify situations in which ritual has become so distorted by external forces and agendas that it no longer carries a societal function, no longer has meaning, and no longer serves the purpose for which it is designed. The problem relates to those instances in which outside influences combine with a deep level of political, cosmological and spiritual insecurity to produce a type of practice no longer carries any meaning. The relationship between people and their culture no longer makes sense. The philosophy behind the process becomes too far dislocated from its original meaning: it becomes distorted and even harmful. People lose their moral control over the processes at play, and communities do not achieve the cosmological and social healing and re-balancing that ritual action is premised on.

⁸³ Author interview with local councilor, Bur Coro, 26.07.12

⁸⁴ Author led group discussion near Odek sub-county, Gulu District, 26.07.2012

⁸⁵ Finnström, ‘Reconciliation’.

It is important to emphasise though that the concern people expressed was not with the alteration of the ritual or the external funds *per se*. This was supported by the fact that there *are* instances where external support for ritual occasions is lobbied for, gratefully received, and appears to have a positive impact. This was most notably the case in relation to the mass cleansing of areas containing unburied bones. As the displacement camps were gradually disbanded, NGOs and the Acholi leadership began to encounter deep concern from people about resettling where the dead had not yet been reconciled with the living, and incurring the wrath of ‘*cen*’.⁸⁶ During her time as a Technical Advisor on Community Reconciliation at the Concerned Parents Association (CPA), Holly Porter re-called that Mato Oput was not once requested by communities, rather:

‘there was overwhelming demand for a ritual that cleansed the earth, cooling down the spirits of those who died violently without decent burials – the dead needed to be reconciled with the living.’⁸⁷

The actual ceremonies, when they took place, were externally funded and adapted quite significantly by those taking part, but this was not considered to alter their efficacy. They met an articulated need and served a clear and immediate purpose.⁸⁸ External support for reconciliation between the living has proved to be a much more complex and fraught process, one that cannot be fast-tracked through external support for ritual because the ritual itself makes little sense unless the necessary conditions for social repair, in the form of acknowledgement, dialogue and compensation, are present. This represents an unresolved tension, because generally people do not have the resources to pay for compensation. Meanwhile, inter-communal acknowledgement and dialogue, or what civil society in northern Uganda refers to as ‘truth-telling’ is a difficult topic and people are ambivalent. Clark’s distinction between truth-telling and truth-hearing (in the Rwandan context) is pertinent here. Across research sites, there was a clear tension between the desire for the truth to be told, and the concern that hearing it might further disrupt relations that are already fragile.⁸⁹

Forcing forgiveness?

⁸⁶ Holly Porter provides an excellent discussion of the concept of ‘*cen*’, see Porter, ‘Rape’ p.99

⁸⁷ Discussion with Holly Porter; August 2012; see also, http://otjr.cs.ox.ac.uk/materials/podcasts/155/OTJRConferenceProgramme_18.6.09_.pdf

⁸⁸ *ibid*

⁸⁹ Clark, ‘Gacaca’, pp.186-121.

Forgiveness promotion: religious leaders, NGOs and local government

On the wall of the Gulu Archdiocese Justice and Peace Commission, there is a poster which shows two men on their knees, leaning forward and drinking the bitter root from a shared calabash during a *Mato Oput* ceremony. Underneath the picture a caption reads *Mato Oput: Communal Reconciliation strengthened with Christian Values. Forgive us our trespasses and we forgive those who trespass against us.* Acholi religious figures – with the notable exception of the Pentecostal leadership – have gradually embraced what they see as traditional Acholi techniques of reconciliation.⁹⁰ Religious leaders have meshed socially restorative cultural traditions with a broader Christian meta-narrative that extols the virtue of forgiveness. The now retired Anglican bishop Ochola, for example, has argued that *Mato Oput* is biblical and Christian.⁹¹ Archbishop Odama, the Catholic Archbishop of Gulu since 1997, has a schema of forgiveness which distinguishes between the ‘cultural’ and the ‘divine,’ and he regards *Mato Oput* as a valued example of the former, despite the latter being ‘purer and absolutely unconditional.’⁹²

Religious and mainly Christian themes related to the ideals of forgiveness and reconciliation have thus shaped the public discourse about transitional justice in northern Uganda.⁹³ This fits a broader international pattern – visible, for example in South Africa, Sierra Leone, Guatemala and Northern Ireland, in which religious leaders have played an important role in configuring the terminology and ideas about how to deal with a violent past.⁹⁴ Religious leaders channel their advocacy and transitional justice work through the Acholi Religious Leaders Peace Initiative (ARLPI), which was set up in 1995 to promote

⁹⁰ This was by no means inevitable. When the possibilities of *Mato Oput* in peacebuilding were first extolled, religious leaders were hesitant about supporting cultural religious practices which their predecessors had dismissed, sometimes violently. According to Patrick Loum, the Co-coordinator of the ARLPI, religious leaders gradually came to the conclusion that what the cultural leaders were practicing was ‘similar to cleansing in the old testament’ and that this has ‘allowed the religious leaders to work in collaboration with the cultural leaders on transitional justice’, (author interview with Patrick Loum, Gulu, 23.07.2012). This approach echoes that of Desmond Tutu, who famously conflated Christian spirituality with notions of African mysticism in his promotion of the South African TRC.

⁹¹ Author interview with retired Bishop Ochola, Gulu, 11.09.2012

⁹² Author interview with Archbishop Odama, Gulu, 24.09.2012

⁹³ According to the 2002 Uganda Population and Housing Census, 41.9% of the Ugandan population list themselves as Catholic and 35.9% list themselves as Protestant. In Acholiland, Catholicism is better represented. The most recent detailed figures are out of date however. Finnström quotes the 1991 national census which finds that 70% of the Acholi population are Catholic and 25% are Protestant. He also points out correctly that more recently, Pentecostalism has gained force in the sub-region. See Finnström, ‘Surroundings’, p.246.

⁹⁴ Thomas Brudholm, ‘On the Advocacy of Forgiveness after Mass Atrocities’, in T Brudholm & T Cushman (eds), *The Religious in Responses to Mass Atrocity: Interdisciplinary Perspectives* (Cambridge: Cambridge University Press, 2009) pp. 124-153; Richard Wilson *The Politics of Truth and Reconciliation in South Africa: Legitimising the Post-Apartheid State*, (Cambridge: Cambridge University Press, 2001) p.9

reconciliation, healing and forgiveness in the context of the LRA conflict.⁹⁵ The political position of the ARLPI finds its expression in the provisions of the Amnesty Act, which it credits itself with devising and pushing through parliament.⁹⁶ Scholars and activists, meanwhile, have emphasized an innate Acholi proclivity toward forgiveness after atrocity. In an influential publication, Lomo and Hovil quote a religious leader as saying that:

‘culturally, people’s ideas of forgiveness are entrenched. They don’t kill people; they believe the bitterness of revenge does not solve the problem. So it was easy for people to accept the idea of amnesty.’⁹⁷

This rhetoric has, as Tim Allen argues, promoted a ‘kind of received wisdom that the Acholi people have a ‘special capacity to forgive’.⁹⁸

There is no one single definition of ‘forgiveness’ and the word has no translation in Acholi. The closest phrase is ‘*timo-kica*’ which means to give someone mercy. ‘*Timo kica*’ was adopted as the phrase to describe the Amnesty Act. This renders confusion between political and interpersonal notions of forgiveness very likely, particularly amongst external researchers and practitioners who are not familiar with the Acholi context.⁹⁹ The concept of *timo kica* does not fit neatly with Christian notions of forgiveness, and this will be explored further below. The form of forgiveness being advocated by Acholi religious leaders, particularly the Catholic and Pentecostal leadership, is demanding, and well captured by Robert Enright’s ‘positive’ definition as:

‘a willingness to abandon one’s right to resentment, negative judgment, and indifferent behavior toward one who unjustly injured us, while fostering the undeserved qualities of compassion, generosity, and even love toward him or her.’¹⁰⁰

The forgiveness being asked of people is not simply to refrain from revenge or feelings of revenge, but actively to accept the wrongdoer and the committed wrongdoing. The

⁹⁵ Today, on its website, the ARLPI refers to itself as an ‘interfaith peacebuilding and conflict transformation organisation’ and it brings together leaders from six different religious groups and denominations: Anglican, Catholic, Muslim, Orthodox, Pentecostal and Seventh Day Adventist; for a discussion on the origins of the ARLPI, see Bradbury, ‘Overview’, p.21.

⁹⁶ Acholi Religious Leaders Peace Initiative, ‘Position Paper on Amnesty Law’ (12 February 2004).

⁹⁷ Zachary Lomo and Lucy Hovil, ‘Behind the Violence: The War in Northern Uganda’, *ISS Africa Monograph 99* (March, 2004), p.64

⁹⁸ Allen, ‘Trial’, p. 4-5

⁹⁹ This conceptual and definitional confusion was according to my research assistant, more of a problem for distanced observers. In his own translations he was sure to be clear about making the distinction, particularly between the Amnesty Act itself and the broader notion of ‘mercy’.

¹⁰⁰ Quoted in Renee Jeffrey, ‘Forgiveness’, p.80

ability to forgive, meanwhile, is interpreted as a sign of ‘human perfection’, in which the ‘deepest qualities of humanity’ are re-established.¹⁰¹

Whether or not the forgiveness being promoted is contingent or non-contingent on other circumstances (for example acknowledgement of wrongs by the perpetrator, or compensation), religious leaders all, to some extent, proscribe a particular emotional and moral response to injustice and atrocity. At the ‘unconditional’ end of the forgiveness promotion agenda sits the hugely influential Catholic Archbishop John Baptist Odama of Gulu. The Pentecostal leadership also supports this position. To Odama, unconditional forgiveness is divine and represents absolute moral virtue, and a refusal to forgive is morally untenable.¹⁰² The forgiver and the unforgiver exist in a binary relationship: the former is healthy, humane and civic minded; the latter is sick, revenge ridden and even dangerous.¹⁰³ A bio-medical language was used in which forgiveness was painted as a panacea for individual and societal recovery. Odama deployed this kind of language frequently, arguing, for example, that:

‘Forgiveness is medicinal, it heals the wounds of hatred and anger and lets you see beyond one or two occasions when a death case may have happened. By forgiveness you are removing the dust so that purity and glowing beauty of the human person can be seen.’¹⁰⁴

When asked how he and his fellow Catholic priests counsel their congregations he explained that people are asked:

‘Are you going to keep this anger in yourself permanently? It causes damage. Why do you want to torture yourself? You will end up unloading this on another innocent person. So forgiveness, and especially unconditional forgiveness, is the best.’¹⁰⁵

Odama saw two antithetical responses to the experience of injustice and atrocity: either you forgive, or you will desire revenge, which in turn was a spiritual pollutant and ‘devilish emotion’.¹⁰⁶ Pentecostal leader James Ochan had a similar approach arguing that:

¹⁰¹ cf. Brudholm, ‘Advocacy’ p. 127;133;

¹⁰² Author interview, Archbishop Odama, Gulu, 24.09.2012

¹⁰³ Brudholm and Rousoux write about this approach in different contexts, in, Thomas Brudholm and Valerie Rousoux, ‘The unforgiving: reflections on resistance to forgiving after mass atrocity, *Law and Contemporary Problems*, 72:2 (2009) pp.33-50, p.35; Brudholm, ‘Advocacy’.

¹⁰⁴ Author interview, Archbishop Odama, Gulu, 24.09.2012

¹⁰⁵ *ibid*

¹⁰⁶ *ibid*

‘Forgiveness is unconditional, it protects you and makes you feel better. In some cases they may say you need this and that before forgiveness but for us Pentecostals, we just say forgive.’¹⁰⁷

When asked how this actually works in practice, Ochan told the story of his brother’s wife:

‘She was gang-raped by about 30 rebels. I tell her God has left you with a husband, Jesus Christ and the Church. Things are not so bad. We are here for you. The more you delay to forgive, the more you harm yourself.’¹⁰⁸

There is a beguiling emancipatory logic to the promotion of forgiveness. As Muslim leader Sheikh Khalil put it, ‘people must do it to set themselves free. Otherwise you are in bondage, with wounds in your heart that will even affect your health.’¹⁰⁹

The religious leadership often engages in a ‘forgiveness journey’ rhetoric. Exalting stories are told in which a victim transcends his or her feelings of vengeance and becomes a forgiving, enlightened and purposive individual. In Odama’s case, the story was about two best friends, both of whom had been abducted by the LRA. One of the boys managed to escape, the other rose to a more senior rank and decided to punish his friend for escaping by murdering his mother. He was captured shortly afterwards by the UPDF and was sent to GUSCO reception centre a few weeks later. Here he met his friend, who had fled to the reception centre after finding out about the death of his mother. As Odama recounts it, when they first saw each other:

‘They approached each other, and as they came nearer, that boy whose mother was killed, he got up and he embraced the one that killed his mother. He said, “I saw you kill my mother. It is no use to destroy two lives, I forgive you”. The boy that killed the mother began to weep; wailing, it was too much. He was sure this boy could have taken revenge. But the forgiveness had more power than being injured. He pleaded to the boy, “please, I am weak; I need your support”. The other one, he upheld him and said, “don’t cry, don’t cry” and they became the greatest of friends again.’¹¹⁰

For retired Anglican Bishop Macleod Baker Ochola, who has been a charismatic and vocal protagonist in transitional justice debates in northern Uganda, particularly since the mid 1990s, true forgiveness was conditional upon acknowledgement of wrongdoing. So long as someone could tell the truth about what they have done or witnessed, they must

¹⁰⁷ Author interview with Pastor James Ochan, Gulu, 28.09.2012

¹⁰⁸ Author interview with Pastor James Ochan, Gulu, 28.09.2012

¹⁰⁹ Author interview with Sheik Musa Khalil, Gulu, 12.09.12

¹¹⁰ Author interview with Archbishop Odama, Gulu, 24.09.2012

be forgiven and reconciled with their communities. Ochola recognised a tension between Acholi values of forgiveness which were 'not automatic' and the Christian values of forgiveness being promoted across Acholiland, which tended to focus on the need for an unconditional forgiveness. His emphasis on the necessity of 'truth telling' before forgiveness was an attempt to bridge the concepts because he recognised:

'A great tension in communities...if someone wrongs you and there is no acceptance of responsibility it is a just cause (*lapée*) for revenge. Even though Jesus would not agree.'¹¹¹

Muslim leader Sheikh Musa Khalil, articulated a similar relationship between acknowledgement, repentance and forgiveness and related this back to the Koran:

'The Koran tells us you must confess, verse 160 says you must not conceal. So our major duty is to sensitise the community with Koran and bible, so they will not fear. Acholi culture is similar to the Koran, truth-telling is best.'¹¹²

The onus then remains on the victim to forgive after a confession is delivered. This applies even to the key architects of the LRA insurgency, including Joseph Kony. Ochola claims, if he came back today, and if he were to repent, 'they must forgive him.'¹¹³

Forgiveness promotion in Acholiland is not limited to the religious leadership. Because of the Amnesty Act and the mandate of the Amnesty Commission, it was also part of government policy, and various NGOs as well as the local political leadership have adopted it as a method of peace-building and reconciliation. It has been associated, in particular, with the District Peace and Reconciliation Teams (DPRT), as well as the organisations running the various reception centres across Acholiland, notably World Vision, Gulu Save the Children Organisation (GUSCO), Caritas and Concerned Parents Association.¹¹⁴ Indeed the Amnesty Commission's 're-settlement' and 'reintegration' function has been largely outsourced to the centres, which in turn, have called upon religious leaders to help them 'sensitise' communities about forgiveness. Each centre had a slightly different philosophy and mandate, but they were set up gradually between 1995-2004 to receive, rehabilitate and resettle formerly abducted people – 'FAP's in

¹¹¹ Author interview with rtd. Bishop Ochola, Gulu, 11.09.2012

¹¹² Author interview with Sheikh Musa Khalil, Gulu, 12.09.12

¹¹³ Author interview with rtd. Bishop Ochola, Gulu, 11.09.2012

¹¹⁴ There were several such centres across Acholiland and in other affected areas, notably in Lira, Lango and Soroti, Teso. The most comprehensive evaluation of the reception centres is Allen and Schomerus, 'Homecoming'.

NGO parlance – who had either escaped from the LRA themselves or been rescued or captured by the UPDF.

Two important themes inform NGO and local government forgiveness advocacy, and both relate to the nature of the war in Acholiland. The first was the argument that the vast majority of LRA fighters, even those in senior ranks, were abducted against their will so that for the duration of their time in the LRA, their personal autonomy was entirely suspended. They were not, therefore, culpable for their actions. This comprised a sort of historical contingency narrative in which the victim could easily have been the perpetrator and the perpetrators themselves were victims. The Gulu District Speaker summed up the rhetoric well:

‘today is me, tomorrow is you...those who return, they did not apply to go into the bush, they were forced to commit crimes, and now we must receive them back into our community.’¹¹⁵

Focus group discussions revealed that the majority of respondents had been ‘sensitised’ by NGO ‘anti-stigma’ interventions – either face to face or via the radio. These interventions were designed to shape the way in which camp, and, more recently, re-settled populations, received returning combatants.¹¹⁶ During group discussions people explained how this form of ‘sensitisation’ represented a defining moment in which feelings of anger, revenge and bitterness were invalidated, despite often being preserved privately. A representative comment was one made in Amuru District, just north of Gulu town, an area which was home to the largest IDP camp during the war:

‘At the peak of the insurgency, around 1996, at the time when there was no amnesty, no GUSCO, we had problems here. People had attitudes of revenge against those formerly abducted children. Before trainings began we had a lot of discrimination and stigmatisation, even in small gatherings like this. The trainings helped us see those returning rebels in a good light because their abduction was against their will.’¹¹⁷

A community development officer at World Vision, who worked on reintegrating ‘FAPS’ back into their communities explained that:

‘sometimes the community will realize that the boy has worked in the area, maybe even several times, and then they realize, it is this boy who killed my relatives. In that kind of situation we bring in religious leaders, they will bring in

¹¹⁵ Author interview with Gulu District Council Speaker, Okello Peter Douglas, Gulu, 07.08.09

¹¹⁶ Focus group respondents referred most commonly to World Vision and Caritas ‘sensitisations’ on forgiveness and acceptance. World Vision refers to ‘substantive resources’ allocated towards anti-stigma campaigns, see World Vision Uganda, *From Despair to Hope* (April 2013), p.32 (on file with author).

¹¹⁷ Author led group discussion Amuru District, 09.08.2012

Christianity and call for forgiveness and we will ask those people that are resisting, 'what if he was your son?'¹¹⁸

This brings us to the second, interrelated theme that forgiveness promoters draw upon and it dovetails with the perception of suspended personal agency described above. It is the manner in which the war in Uganda has, in the words of Adam Branch, been 'defined around children, whether former LRA recruits or the so called night commuters'.¹¹⁹ The deplorable abduction of children by the LRA was strongly featured in international campaigning to end the war.¹²⁰ This is what Laura Edmondson calls the 'master narrative' around the LRA insurgency: the rigid and non-dynamic presentation of a small cadre of enslavers and a swollen mass of innocent, helpless and incapable children.¹²¹ At its most extreme, even the enslavers were cursorily infantilised. During interviews for example, both Archbishop Odama and Bishop Ochola referred separately to recently captured LRA commanders Thomas Kwoyelo and Ceaser Acellam as 'children'.¹²² The inconvenient reality is that many LRA abductees had diverse and meaningful experiences in the bush and affected communities recognise this. Ben Mergelsberg's study of young male returnees, for example, depicted a range of complex perspectives on life with the LRA, none of which fit neatly with the dichotomous master narrative described above. The young men had 'self esteem', they had a sense of independence, and they acknowledged experience of two different worlds: 'both worlds have their pleasant sides and both worlds can be terrifying'.¹²³ This complexity has been obscured by forgiveness advocacy which asks not just that people forgive, but also that they accept a particular version of events, regardless of their own direct personal experiences of the conflict and its aftermath.

Tensions between forgiving, forgetting and reconciling

There are four memorial sites in Acholiland and Lira that are currently being developed by the Uganda National Museum, with funding from the Norwegian Ministry of Foreign

¹¹⁸ Author interview with World Vision Rehabilitation Centre Community Worker, Gulu, 02.10.2012

¹¹⁹ Branch, 'Displacing', p.133

¹²⁰ The US based lobby group, Invisible Children is the most well-known campaigning group in this vein.

¹²¹ Branch, p.134; Laura Edmondson, Marketing Trauma and the Theatre of War in Northern Uganda, *Theatre Journal*, 57:3 (2005), pp.451-74

¹²² Author interviews 11.09.2012 and 24.09.2012

¹²³ Mergelsberg, 'Two Worlds', p.172; Christopher Blattman, 'From Violence to Voting: War and Political Participation in Uganda', *American Political Science Review* 103:2 (2009) pp.231-247 p.231; For a broader discussion on the political identity and agency of child soldiers, see Mark Drumbl, *Reimagining Child Soldiers in International Law and Policy*, (Oxford: Oxford University Press, 2012).

Affairs, and curated as forgiveness spaces. The director of the program – who had recently returned from a course in South Africa explained the logic behind the initiative:

‘Why preserve a bad history? Songs and dances, they pass messages: we had a bad past and now we are telling people to forgive each other...our main focus is not about the history...we want to transcend history. It is about focusing forward.’¹²⁴

This forward-looking agenda finds a more sinister expression in the perplexing link that is often established between forgiving and forgetting. A local politician and member of the Gulu District Reconciliation and Peace team was quite clear about this: ‘yes, of course, we want them to forgive but we want them to also forget. We don’t want them to remember.’¹²⁵ A senior District staff member recalled how before the DPRT was set up with support from Save the Children in 2008, people were returning from the bush and being rejected by their communities. She explained that the approach of the DPRT was to:

‘Train the community to accept people back and to ensure less rejection. We said, yes, you will be bitter but you have to let them come home on a humanitarian basis... we did community dialogues with a reconciliatory function – to ensure people forgive and start living in harmony again. We tell them that former abductees were forced to do atrocities in their own communities and that time heals. DPRT is supposed to neutralize people’s minds about revenge. We are trying to neutralize the minds of the community.’¹²⁶

ARLPI leader, Musa Khalil used the same sort of obliterating logic: ‘we have to change the brain of the people to forget about the war.’¹²⁷ This applied as much to the formerly abducted people as it did to those who never fought in the bush. At the World Vision reception centre, a senior member of staff talked about the use of play therapy, a form of counseling widely used at the centre to ‘rehabilitate’ the ‘FAPs’. She explained that it has been used to ‘reverse their minds so that they can leave the past and move ahead’.¹²⁸ The idea that forgetting could be mediated by a religious leadership or by NGOs or the District council was unsettling, and for many, confusing. In one group discussion in Nwoya District in western Acholiland people remembered a ‘training’ by an NGO when they were still in the camps:

¹²⁴ Author interview with Abiti Adebo Nelson, Conservator Ethnography, Department of Museums and Monuments, Ministry of Tourism, Wildlife and Heritage, Uganda Museum, 04.10.2012

¹²⁵ Author interview with Okello Douglas Peter, 07.08.2012

¹²⁶ Author interview with Goretti Okech, 31.07.2012

¹²⁷ Author interview with Sheikh Musa Khalil, 12.09.12

¹²⁸ Author interview with World Vision Rehabilitation Centre Community Worker, Gulu, 02.10.2012

‘one of the cardinal themes was that we were told to forget the past, what had happened. It was very important to put the past behind us. But you can’t forget. That awareness that bad things happened is there, so we have it in our heads.’¹²⁹

This coercive and disciplinary approach has been critiqued by Brudholm and Rousoux who have stressed the need for ‘sustained and ethical reflection on the advocacy and practice of forgiveness, not least in the context of transitional justice and reconciliation’.¹³⁰ Indeed, during field research, respondents expressed clear concern about what was being asked of them. At a group discussion in Agago District, some members misunderstood the goal of the discussion, which was to examine themes of forgiving, forgetting and co-existence. One elderly man was concerned that he was going to be ‘asked to forgive *again*’ (italics added). He continued:

‘amongst us there could be some who could have lost their dear ones and this thing, it really affected us so we may not be at liberty to embrace mercy, the amnesty.’¹³¹

It transpired that the community had had ‘trainings’ on reconciliation and forgiveness and that for some it had made them ‘feel so bad’. Reflecting on the work she did in the community, a local government community development officer had a moment of reflection:

‘you know, it is almost unfair when we expect someone to let go – it is very, very unfair, forcing someone to forgive. How do you train someone to forgive? It comes from within.’¹³²

What she highlighted, perhaps unwittingly, was the ambiguous and uncomfortable relationship between different levels of forgiveness: state sanctioned forgiveness; externally mediated communal forgiveness, and interpersonal forgiveness. In a long discussion with the head of the Gulu NGO forum, who had himself been a reception centre worker for ten years, he explained that community re-settlement and re-integration ‘preparedness’ in the form of forgiveness advocacy was ‘no guarantee that people are prepared to live together – such togetherness is really still a challenge.’¹³³ What NGOs call ‘forgiveness sensitisation’ has certainly trained people that revenge, bitterness, and stigma, are somehow wrong or deviant, but this did not translate into

¹²⁹ Author led group discussion, Nwoya District, 13.08.2012

¹³⁰ Brudholm, ‘Advocacy’ p.35

¹³¹ Author led discussion group, near Omot sub-county, Agago District, 02.08.2012

¹³² Author interview with Goretti Okech, Gulu, 31.07.2012

¹³³ Author interview with Mark Avola, Director, Gulu NGO Forum, 02.10.12.

acceptance. Again, this highlighted the unresolved tension between forgiveness, truth and reconciliation, because, as the Gulu NGO forum leader explained:

‘for forgiveness to work, for forgiveness to become reconciliation, it needed a system that helped people, it needed truth-telling and compensation but truth-telling needs protection because if I tell you, yes, I killed your uncle, won’t you just rise up and kill me?’¹³⁴

The tensions between different levels of forgiveness were clear to many people in northern Uganda. During a lively discussion with a group of young men in Amuru District, a distinction was made between ‘strands’ of forgiveness. One young man who had spent almost his entire life in the camps but had never been abducted explained that:

‘there are two strands. You have natural or true forgiveness and it comes when the two parties meet in some kind of natural way, when they come and meet and discuss and then true forgiveness can be realized. And then you have the radio approach and that one is different. It is more orientated towards the side of the government, where we have amnesty. It is more those outside parties trying to bring us all together. But I really feel it should come from *my* mind and *my* heart that the two people should meet and that process will be more natural. Natural forgiveness is different from the forgiveness that comes from sensitisation.’¹³⁵

The complexity of this young man’s response illustrated the fallacy of the zero sum blissful forgiveness versus violent revenge discourse. As will be explored further below, it has not been reflective of people’s every day experiences or the choices that they have made. The elevated tales of unconditional forgiveness and dangerous revenge were largely apocryphal. The use of stark antithetical moral terms has distorted our understanding of individual and communal motives in today’s northern Uganda: it has become a misleading gauge by which behavior is measured. Typically, for example, a refusal to forgive or to engage in discussion about forgiveness and reconciliation is pathologised by forgiveness promoters as being caused by an internal deficiency (‘trauma’ or ‘bitterness’) or a pernicious external influence (‘alcohol’). The same elderly gentleman in Agago District who rebuffed what he saw as an attempt to impose forgiveness, also asked, perhaps provocatively, ‘how will you deal with me?’, a recognition that his resistance was somehow deviant. At the other end of the spectrum, the resettlement of former LRA fighters into their communities, and the relative lack of overt violent revenge related to the conflict, has been interpreted misleadingly as representing something akin to unconditional and abiding forgiveness. The tenor of this analysis, which relies on absolute moral categories, acts as an impediment to a more perceptive

¹³⁴ *ibid.*

¹³⁵ Author led discussion with group, Amuru District, 09.08.2012

examination of reality: are people's attitudes to forgiveness and revenge really that spectacular? Or are they ambiguous, subtle, and contingent upon other societal forces? Is forgiveness an ethical or religious position, or is it rooted in political pragmatism and even resignation, or perhaps a mixture of the two?¹³⁶ Indeed if we neglect these questions, we also neglect the very real possibility that there exist a range of 'possibilities of vindication and repair between the extremes of vengeance and forgiveness.'¹³⁷

The forgiveness agenda has always carried a function in Acholiland, because of the nature of the LRA conflict, which is why it is only rarely openly contested. The political danger of forgiveness is now, however, becoming increasingly apparent. As discussed earlier, the themes that inform the promotion of forgiveness have drawn upon the internecine and fratricidal nature of the war. Pastor Ochan explained candidly his own experience, growing up in a village near to where Joseph Kony was from:

'it was so friendly at the beginning, we would talk and squat. Everyone gave these rebels their support. They were our own tribesmen. We offered them every sympathy that has made reconciliation easier, even today. Those ones in the bush are our own relatives. Whether you like it or not, preaching about reconciliation is easier because you are talking about people's families.'¹³⁸

Whether or not sections of the 'traditional leadership' gave their blessing to Kony and the LRA in the early days is a highly contested issue.¹³⁹ The point Ochan makes about 'people's families' has an inescapable truth to it though. As a result the forgiveness agenda tends to fall on deaf ears in LRA-affected areas outside of the sub-region. One NGO worker explained that in West Nile for example, 'people are not amused that ex-combatants are moving freely, they say, these are the ones who put us through this.'¹⁴⁰ Even religious leader Musa Khalil expressed fear about how the forgiveness agenda looks to those on the outside:

'Now, people are still scared because the LRA are still out there, but the day of the last bullet, without justice...think about the killing in Lango, where they still harbor pain, in Teso, West Nile, people still harbor so much bitterness, you don't know what they are thinking; what they are planning.'¹⁴¹

¹³⁶ Philip Gourevitch makes this point in the following article about the aftermath of the Rwandan genocide: 'The Life After', *The New Yorker*, May 2009

¹³⁷ Brudholm, 'Advocacy', p.128-9

¹³⁸ Author interview, Gulu, 28.09.2012

¹³⁹ For a discussion, see Doom and Vlassenroot, 'Kony's's'.

¹⁴⁰ Author interview, Gulu, 24.07.2012

¹⁴¹ Author interview, Gulu, 12.09.12

A recent trend has been for local politicians, and even religious leaders, to raise the security implications of forgiveness. In August 2012 a delegation of Acholi leaders – religious, political and traditional – visited the LRA-affected areas in CAR and DRC and came back quite bruised by the anger directed towards them and the Acholi as a whole. Khalil, for example, recalled how in DRC a group of elders were ‘full of quarrel and finger pointing’ telling him, in reference to the LRA fighters operating in the area, ‘you come and you take your sons away from here!’¹⁴² In CAR the Gulu LCV Chairman was shouted down when lobbying for an amnesty law similar to the one in Uganda. Local leaders asked him:

‘ “these people cause havoc in our country. How can you accept someone who has killed, who has raped?” They keep asking us these questions and we have no answer.’¹⁴³

Indeed forgiveness in Acholiland carries a unique logic, it has been equated with Amnesty and was designed to address political and social reconstruction in a context in which victims, perpetrators and victim/perpetrators had to live side by side. In areas outside of Acholi affected by LRA violence, the call for forgiveness has not necessarily translated.

The problem with conflating forgiveness and reconciliation

The expansive notion of forgiveness put forward by advocates in Acholiland has often been conflated with the concept of reconciliation. Together, forgiveness and reconciliation are too often understood to comprise *the* ‘Acholi’ way, when in fact, it they represent a powerful vision of the way that things *could* or *should* be. The way in which people actually enacted or understood concepts of forgiveness and its relationship to reconciliation were complex and are explored below. This provides important background for understanding how former LRA members have – if at all – re-settled back into their communities, a topic that will be explored in more detail in the following chapter.

As discussed above, the relationship people described with the forgiveness that they enacted was ambiguous. If religious doctrine was mentioned in relation to forgiveness, it

¹⁴² Author interview, Gulu, 12.09.12

¹⁴³ Author interview, Gulu, 10.09.2012

tended to be ideas about judgment and divine retribution that were emphasized. Linked to this was the commonly expressed assertion that forgiveness was contingent and fragile, or, as one respondent called it, 'transitional'.¹⁴⁴ Rather than pronounce forgiveness in God's name, people left the status of the relationship open and uncertain. The acknowledgement that claims for revenge and 'bitterness' must be surrendered did not equate to absolution for the wrongdoing that has been perpetrated. Instead it represented a pragmatic transfer of judgment and punishment into the hands of a trusted higher authority. A young man who had witnessed a massacre in which two of his own brothers were killed and dismembered insisted that what happened 'does not affect me now... it cannot'; when asked why, he explained that 'God will judge Kony and those people'.¹⁴⁵ A sense of powerlessness was implied and can be found elsewhere in people's argument that they '*have*' to forgive for a range of pragmatic reasons, none of which fits neatly with Christian doctrine. Explanations for forgiveness are captured well by Rosalind Shaw's use of Begona Aretxaga's term 'choiceless decisions' whose logic is located in 'everyday requirements of living'.¹⁴⁶ In one village in Amuru District, a group of women explained that 'one of the things we have to do is to just pray and forgive these people, you cannot retaliate or there will be more war'; far away in another village, in Agago District, a group explained that 'if you are not for forgiveness then there would be no government structures here or government presence because there would still be war'.¹⁴⁷ Forgiveness was described here as a social act: as a way of restoring civic life but not necessarily a complete change in sentiment towards the wrongdoer or the wrongdoing.¹⁴⁸

Across research sites, people expressed ambivalence in their attitude towards the form of forgiveness they had taken, as if it had an unstable quality to it. In Amuru District, a group of men explained that what they have in their village is 'some kind of makeshift forgiveness, just to help us reach some point but we really feel that there are issues that we need to handle'.¹⁴⁹ The volatile nature of their forgiveness was illustrated by the idea of 'triggers' that set in motion a whole range of feelings that are normally suppressed or controlled. One young man who was training to be a doctor, explained that:

¹⁴⁴ Author led group discussion, Amuru District, 09.08.2012

¹⁴⁵ Author interview, Agago District, 02.08.2012

¹⁴⁶ cf. Shaw, 'Forgiveness', p.22

¹⁴⁷ Author led group discussion Agago District 02.08.2012; Author led group discussion, Amuru District, 08.08.2012

¹⁴⁸ See, Jeffrey, 'Forgiveness', p.8.

¹⁴⁹ Author led group discussion, Amuru District, 09.08.2012

‘If you come back home from the Bush, here we are youth, and we will interact. So I can pretend that I have forgiven you but it is not in my heart so if one day you hurt me, then my reaction will really be vigorous and I will just fight. But verbally people have forgiven each other, but no, if you hurt me I will really react with what is in my conscience and I will act. So that is what is happening here.’¹⁵⁰

Another man sitting next to him chipped in, ‘yes, anything, anything can trigger people into feeling bad and bring you back into consciousness’.¹⁵¹ The idea of ‘triggers’ was raised several times across research sites to describe the relative fragility of co-existence, and the most common were said to be disputes over land, where things ‘become confrontational’.¹⁵² The other ‘trigger’ widely cited was drunkenness. In Nwoya District, for example, elders explained that when those who have suffered become drunk, they feel uninhibited and, as one woman put it, ‘they quickly remember what happened here and they become bitter’.¹⁵³ People who never fought in the Bush described these triggers as factors that quickly perforate the forgiveness that they hold. Returnees on the other hand, saw the ‘triggers’ differently, as excuses to marginalize, exclude and stigmatise them, and in their view, as evidence of the superficiality of people’s claims about acceptance.

Of the fifty returnees interviewed for the research, every single one said that at some point they had been ‘stigmatised’ by their families or broader communities for having spent time in the LRA. Forty-eight had been through either a ritual or religious process on their return but this was portrayed more as a one off event that allowed for co-existence, and nothing more enduring. Although most were also able to re-count instances in which a family member or member of the community had shown them kindness and acceptance, the overwhelming feeling was that despite talk of forgiveness and ritual cleansing they were being punished for having spent time in captivity. Instances in which this stigma translated into violent physical acts were largely linked to domestic violence. Most of the time ‘stigma’ manifested itself as a form of low-level bullying and intimidation. It was common, for example, for returnees to say that they would avoid larger gatherings of people, particularly in the trading centers for example, where people might get together and drink. In Amuru District, one woman explained that:

¹⁵⁰ Author led group discussion, Agago District, 02.08.2012

¹⁵¹ Ibid

¹⁵² Author led group discussion, Amuru District, 09.08.2012

¹⁵³ Author led discussion group, Nwoya District, 15.08.2012

‘If they see you there and they have been drinking, they will say “do not come here because it is possible that you may strangle us!”’. So we avoid these situations.’¹⁵⁴

In Nwoya District, one woman said that she had recently won a traditional dancing competition and then people began accusing her of cheating, ‘people began to say that I was not alone, I mean that the other spirits had possessed me and helped me to win’.¹⁵⁵ This kind of treatment was recognized as an issue by local authorities, many of whom spoke quite openly about the ‘stigma’ that returnees commonly face. A sub-County chief in Agago district explained that:

‘even after these rituals, this stepping on the egg, people say, that child, it belongs to the LRA, it is a child of Kony, a “*come back home*” It is very obvious that it happens and it is always there. To some extent it deters them from moving forward. Many get withdrawn from communities because you go out and people point fingers. It is worst when they first come back and they have not yet proved they can live peacefully. Then some just really fail to reintegrate – especially those who maintain their negative habits – thieves and robbers.’¹⁵⁶

The Speaker of Gulu District Local Council was very candid in his assertion that:

‘people have not forgiven at all. Let me be really honest. People are still holding these issues in their hearts and minds and to say that they have forgiven? No, that would be a wrong assumption’.¹⁵⁷

He went on to describe stigmatization as ‘rampant’, at the clan, family and household level, but emphasized its non-public nature, its veiled and unremarkable character. Indeed people’s forgiveness was usually expressed as a commitment to forgo violent revenge. This did not translate automatically into ‘reconciliation’ between the wrong-doer and the victim, and his broader community. To understand this, it is helpful to go back and re-examine the concept of ‘*timo-kica*’, which is the Acholi phrase that people use to translate ‘forgiveness’ but which actually means ‘to give mercy’. In discussions about ‘giving mercy’ a clear distinction was made between this and the Christian notions of forgiveness that stress the unconditional restoration of relations. One Acholi NGO worker who had been interested in these issues for a long time explained this in a way that clarified the complicated dynamics around coexistence, stigma and rejection:

‘*timo kica* means, I give you mercy, it means we can co-exist. And anyway, if someone gives you *timo-kica*, they will be keeping an eye on you. The pressure is

¹⁵⁴ Ibid.

¹⁵⁵ Author led group discussion, Purongo sub-County, 15.08.2012

¹⁵⁶ Author interview with sub-County chief, Agago District, 01.08.2012

¹⁵⁷ Author interview with Okello Peter Douglas, District Speaker, Gulu, 07.08.2012

really there. If you are given timo-kica, you better watch yourself, you better watch that you don't slip up.'¹⁵⁸

The most immediately relevant issue to most people was not the act that was committed in the past but behavior in the present. Acceptance was conditional, to a large degree, on an ability to exhibit what was often described 'normal' behavior. People often made a distinction between those returnees who had made 'good relationships' with the community and those who had not. Part of the role of the community was to enforce a collective code of behavior. As an NGO worker explained, 'if they make a mistake it is also the community who is to blame, there is a collective responsibility to ensure that returnees behave well'.¹⁵⁹ People gave numerous examples of returnees who stole from people's gardens, refused to dig, and threatened people with comments like, 'if you start disturbing me, I will use the same methods as I did when I was in the Bush'.¹⁶⁰ Whether or not such cases were really true, or as common as people claimed, the violent, free-loading, and provocative returnee, certainly looms large as part of people's narrative about everyday life in current Acholiland.

A desire to modulate and control the behavior of returnees was clearly apparent across research sites, and the stated desire 'to regulate the identity of those who were abducted' remains strong.¹⁶¹ In discussions with GUSCO and World Vision staff in 2012 and 2013, it was explained that 'FAPs' must essentially be re-programmed and taught how to be normal before they can be successfully re-settled in their communities. One GUSCO worker explained that she always advised returnees to:

'Be loyal and respectful to the people at home. They must always help where possible in order to make their life easy unless we teach them how they are supposed to behave in the community, they may do things that the community feels is not normal.'¹⁶²

This kind of advice was referred to as a form of 'counseling' for those who had returned from the Bush.¹⁶³ A description of abnormal behavior was hard to pin down; it ranged

¹⁵⁸ Author discussion with Acholi NGO staff member, London, 29.01.2014

¹⁵⁹ Author interview with NGO director, Gulu, 10.07.2012

¹⁶⁰ Author led discussion group, Purrongo sub-County, 15.08.2012.

¹⁶¹ Author interview with Ker Kwaro Acholi Programme Officer, Gulu, 06.07.2012; Blattman and Annan, 'Combatants', p.10-11

¹⁶² Author interview with Gusco staff member, Gulu, 02.10.2012

¹⁶³ As Julian Hopwood and Chessa Osburn note in *Sharing the Burden of the Past* (JRP and Quaker Peace and Social Witness, 2008), 'The term counseling is used almost exclusively in northern Uganda to refer to supportive advice giving rather than a structured talking therapy in the Western sense' p.11; see also Allen and Schomerus, 'Homecoming', p. 54

from being withdrawn and quiet to being rude and disrespectful to the authorities at the centre.¹⁶⁴ There was more clarity on how best to fit in with the community: this boiled down to two important attributes: productivity and inconspicuousness. The former would help ease the burden on conflict-affected and resource-stretched families, and the latter would help assure people that you had not picked up violent or threatening habits in the bush; that you were not infected with *cen* (bad or vengeful spirits). Returnees who experienced significant distress on their return, or other physical illness, were particularly vulnerable to these charges. The criteria for ‘reinsertion’ were summed up well by a Reverend in the eastern part of Gulu district:

‘the most important thing that people want is that when you come back you need to stay in a good mood with those who are already in the village. If you come and start disturbing people they will not like that. The most important thing is that you must behave well in the community. You must stay quiet and you must dig. People don’t want them if they cannot cooperate with the people at home.’¹⁶⁵

A formerly abducted man explained that he had settled back into his community well because his behavior had been exemplary, ‘I want to tell you’ he said, ‘that people can abuse you if you have bad behavior but if you behave well, they will not have the opportunity of saying a word.’¹⁶⁶

The problem outlined above, is that dominant narratives about ‘local’ Acholi approaches over-simplify the complexity of forgiveness and reconciliation in this context. The resulting risk is two-fold. Firstly, that people’s actions and attitudes are misunderstood; their inter-communal ‘forgiveness’ and ‘reconciliation’ are essentialised and interpreted as more abiding and comprehensive than is actually the case. Secondly, that rhetoric around ‘Acholi forgiveness and reconciliation,’ has obscured the more complex conditions that shape possibilities for re-settlement and acceptance (or stigma and rejection). These dynamics are explored in more detail in the next chapter.

Conclusion

This chapter explored the dynamics of forgiveness and traditional reconciliation promotion in Acholiland. It argued that the self-appointed arbiter of the traditional

¹⁶⁴ See also, Allen and Schomerus, ‘Homecoming’

¹⁶⁵ Author interview with ARLPI member, Odek sub-County, 23.07.2012

¹⁶⁶ Author interview, Atiak sub-County, 08.08.2012

reconciliation agenda, the *Ker Kwaro Acholi*, has not managed to achieve widespread credibility or legitimacy across Acholiland. It has been perceived as being too dependent on external sources of funding and agendas and too close to the government. Attitudes towards external support for ritual action, however, were more nuanced. The efficacy and relevance of such processes to communities affected by the war was context-specific and highly dependent on the extent to which particular cosmological and moral needs were addressed. This chapter also explored the advancement of ‘forgiveness’ as a response to mass atrocity, both as a theological and spiritual appeal and as a pragmatic peace-building approach. It found that mediated calls for forgiveness could be coercively demanding and uncompromising and that people’s relationship with the forgiveness that they enact was often deeply ambivalent.

During field research it was common to hear assertions like, ‘forgiveness is embedded in our culture’ or ‘in our culture there is nothing like revenge’.¹⁶⁷ These claims were usually a normative expression of the way that things *should* be, an ideal type vision. Nevertheless, this narrative has carried a lot of weight in broader transitional justice debates and therefore has significant implications. Firstly, because ‘forgiveness’ and ‘reconciliation’ are promoted as cultural givens, the agenda has often served to depoliticise the transition discourse – it has obscured the politics and pragmatism behind the decision to forgive; and presented it as inevitable; and it has also implied a link between forgiveness and reconciliation that does not appear to play out in practice. Tied to this has been a false impression that forgiveness and reconciliation agendas, as promoted by the Acholi leadership and sections of the NGO industry, have, in practice, been any less mediated or coercive than ‘formal’ state led processes like domestic prosecutions. Indeed what was quite apparent was the degree to which the ‘local approaches’ discourse, despite claiming to represent the grass-roots, often suppressed discussion and contestation about how to respond to mass atrocity. Finally, by setting too much store on ‘scripted’ responses around forgiveness and reconciliation, we risk missing the ‘hidden’¹⁶⁸ and the ‘after’ and do not sufficiently engage with the more complex ways in which people use and experience ideas and practices related to ritual,

¹⁶⁷ These quotes were given to the author respectively by Mark Avola, Director of Gulu NGO Forum, 02.10.12 and Lucy Akello, Executive Director, Archdiocese of Gulu Justice and Peace Commission, 24.09.12

¹⁶⁸ The ‘hidden’ here refers to James Scott’s powerful distinction between public transcripts (‘the open interaction between subordinates and those who dominate’) and hidden transcripts (‘discourse that takes place ‘off-stage’, beyond direct observation by powerholders’), See James Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven: Yale University Press, 1992), pp.2-4.

religion, forgiveness, and reconciliation, in order to try to negotiate meaningful relations in the aftermath of the war. This is explored in the next chapter.

8. Justice in Transition?

Introduction

There is an Acholi proverb which is framed as a rhetorical question: *you tell me to keep silence when they have thrown a bone which has hit my eyes?* The ‘bone in the face’ is a metaphor for experiencing wrongdoing and then being asked by relatives and friends not to retaliate. It represents the tension between an instinctive desire to react to the experience of being harmed or wronged, and the broader consequences of those actions. There are different versions of the story behind the proverb, and in each one, friends and relatives of the aggrieved counsel ‘keeping quiet.’¹ The proverb expresses a state of unease, a situation that is unresolved and perhaps unresolvable. It is not clear whether one should sympathise with the advice of the collective or with the frustration of the individual: the message remains subtly ambiguous. There is something human about this uncertainty.

By contrast, transitional justice conceptions, whether espoused by donors or the Kwaro Acholi hierarchy, by government ministers or religious leaders in Uganda, share one thing in common: they are predicated on idealized conceptions of justice and reconciliation. Implementation of the various mechanisms in the TJ ‘toolbox’ aimed at achieving these ends, and ‘sensitisation’ of the affected communities to their purpose, is regarded mainly as a technical matter. This chapter takes a different starting point, one which focuses less on pre-articulations of fixed objectives, and more on the question of how people in Acholiland are *actually* negotiating everyday life in the aftermath of such a deeply destructive conflict. The chapter examines two over-lapping concerns. Firstly it elaborates further on how core concepts of justice, forgiveness, and reconciliation are understood in context. Second – given that transitional justice interventions are sporadic and irregular – it interrogates how people, in their own words, describe the most significant means by which social relations are being navigated in the context of post-conflict life.

¹ For different versions of the story, see Andrew Banya, *Adoko Gwok* (Kampala: Foundation for African Development, 1994) p.23

During focus group discussions and key informant interviews, four central themes emerged, which form the basis for the way in which the discussion proceeds here. The first was the role played by self-help groups, normally savings and loans associations and farming groups; the second was the relationship between justice, reconciliation, and conceptions of time and space, with a particular focus on the role of ritual; the third theme was around local systems of justice and the public authorities that people actually use to resolve war-related disputes. Particular emphasis was placed on land disputes and this chapter goes on to explore what their settlement tells us about broader approaches to justice in the Acholi context. The fourth theme to emerge was around the dynamics of re-settlement and ‘re-integration’ of former LRA members into their communities or what Juan Diego Prieto – in the context of post-conflict Columbia – has called *actual* ‘co-existence situations’.² All four themes define post-conflict life in Acholiland and complicate the dominant transitional justice conceptions explored in the previous chapters.

Moving through: the role of groups

As a preliminary observation, it was striking that the phrase ‘transitional justice’ was not one that people outside of the Acholi elite used spontaneously. Despite this, there did appear to be some variation in knowledge about JLOS and civil- society- led TJ agendas, and this hinged partly on the exposure of various communities to external advocacy and technical support on the issue. In Lukodi and Atiak, for example, survivor associations were formed with external assistance, and were linked to particularly brutal LRA massacres.³ In both places these associations were developed from existing savings and loan groups (*bol cup*), and were forged through their relationship with the Gulu-based Justice and Reconciliation Project. Both areas have some strategic importance. Atiak is a trading centre on the road to the South Sudan border. It is located near some serious land disputes which have erupted between the Government and the local population,⁴

² Ibid p.525

³ The Atiak massacre took place on 20 April 1995 when a group of LRA soldiers, allegedly led by Vincent Otti entered Atiak town in Amuru District. It is estimated that roughly 300 people were killed. The Lukodi massacre took place on 19 May 2004, when the LRA allegedly raided the village of Lukodi killing up to 60 people.

⁴ In nearby Lakang and Apaa, there have been serious disputes over what are regarded as central government attempts to open up land for outside investment. See, for example, ‘Apar and Lakanag residents must relinquish contentious land for tourism, Museveni’, <http://acholitimes.com/index.php/perspectives/letters/8-acholi-news/171-apar-and-lakang-residents->

and has a vocal sub-County government. Lukodi, meanwhile, was the site of one of the ICC investigations. Only twenty kilometres from Gulu town, it is a popular destination for researchers and visiting officials who are based in Gulu for only a short amount of time. In the last five years, villagers have hosted ICC officials, senior ICTJ members, JLOS outreach teams, and more recently the ex-prosecutor of the ICC, Luis Moreno Ocampo, under the auspices of the US lobby group Invisible Children.⁵

‘In certain areas’, explained one NGO worker, ‘people are more knowledgeable because they are so “researched” and the kind of argument you are going to hear from them is different.’⁶ This was an accurate depiction. During a 2012 visit, the survivors’ association in Lukodi, recently re-named the ‘Community Reconciliation Team’, described how they had been trained on accountability issues by the JRP, and that they could now push for certain concessions. The executive committee members using programmatic NGO language explained that:

‘Our main task is to mobilize our fellow victims and survivors. We are now being trained on reparations and traditional justice. When visitors come, we attend to them, like the ICC, one of them came last month and they consult us on issues that they feel they should get right from the grassroots people.’⁷

The Atiak Massacre Survivor’s Association was also familiar with the broader transitional justice related agendas. As was explained in Chapter Five⁸, President Museveni attended annual memorial prayers in Atiak in April 2012 as part of his visit to ameliorate some of the tensions over land in the area. His ‘pledge’ of fifty million shillings to the association was motivated by the political dynamics around the local land disputes, but the demands of the group were framed in the language of compensation for suffering caused by the massacre.⁹

[must-relinquish-contentious-land-for-tourism-museveni](http://mobile.monitor.co.ug/News/-/691252/1391134/-/format/xhtml/-/12fo8cz/-/index.html); ‘Museveni says Amuru land be given to wildlife body’, <http://mobile.monitor.co.ug/News/-/691252/1391134/-/format/xhtml/-/12fo8cz/-/index.html>

⁵ ‘Luis Moreno Ocampo visit Northern Uganda’, *Invisible Children Blog*, 2.04.2014, <http://invisiblechildren.com/blog/2014/04/03/ocampo-visits-invisible-children-northern-uganda/> (accessed 01.05.2014).

⁶ Author interview with NGO staff member, Gulu, 24.07.2012

⁷ Author led discussion group, Lukodi, 25.07.2012

⁸ See Chapter 5, pp.159-61.

⁹ Justice and Reconciliation Project, ‘New Video of the Atiak Massacre Memorial Prayers’, April 20 2012, <http://justiceandreconciliation.com/2012/04/new-video-of-the-atiak-massacre-memorial-prayers/> (accessed 31 January 2013); ‘Atiak massacre survivors get livelihood support from government’, *Daily Monitor*, 30.01.14, <http://www.monitor.co.ug/News/National/Atiak-massacre-survivors-get-livelihood-support-from-government/-/688334/2165418/-/6vbyq1fz/-/index.html> (accessed 05.02.14).

Both groups spoke the language of transitional justice in part, but this was not straightforward ‘mimicry’ of donor and NGO agendas. It was quite evident that in each place the groups had to make their objectives relevant to the community, and this meant re-framing and tailoring towards local priorities many of the lessons learnt in the various ‘trainings’. In both Lukodi and Atiak, the survivor associations helped lobby for and maintain the memorial sites where annual remembrance prayers take place.¹⁰ In Atiak, however, the survivor association explained that it had boycotted the memorial event in 2011 because it did not approve of the way in which sub-county and local government officials were curating the occasion for their own strategic gain. The group expressed particular disdain for the sub-county’s habit of:

‘inviting someone to narrate her experience so that she gets traumatised, cries, falls down and then that is it. They make money, we don’t see the money and we feel as if they are using those experiences for their advantage’.¹¹

The Association requested that the sub-county officials remove the victim testimony from that part of the programme on the basis that:

‘we didn’t want it to be like that, where someone has to tell everyone what happened to them on that day, we don’t want to remember it like that, we need scholarships for our children, we need a government school.’¹²

In Lukodi the memorial was conceptualized in a similar way: as a symbolic reference point for community demands and concessions. The Community Reconciliation Team was not set up for reasons conventionally associated with transitional justice, but rather to secure practical material support for development purposes. The two key reasons which were identified were the number of women and orphans in need of financial support, and the fact that people had lost their assets during the war. In discussions with members of both associations it was acknowledged that unless material needs are addressed the groups serve very little local purpose. The chairman of Lukodi’s Community Reconciliation Team explained that until he had ‘trained’ his community in the potential of the memorial and the survivors association to ‘sort out these development issues’, they saw it as ‘nothing very helpful’.¹³

¹⁰ For a study of memorial projects in Acholiland, see Julian Hopwood, *We can’t be sure who killed us*, International Center for Transitional Justice and Justice and Reconciliation Project (February, 2011).

¹¹ Author led discussion group, Atiak, 08.08.2012

¹² Ibid

¹³ Author led discussion group, Lukodi, 25.07.2012

In addition to externally funded and externally supported ‘survivor’ groups, informants pointed to the numerous local, co-operative-style village groups based on systems that predated the war. What was interesting was that these groupings were also presented as a key way in which communities were coping with the legacy of the conflict. This applied to those who had been in the bush just as much as it applied to those who had not. In three places, for example, farmers’ groups operated on an informal basis, particularly among women.¹⁴ In both Gulu and Agago districts, women explained that farmer groups had been an effective way of coping with poverty, and with their memories of the conflict. ‘In the process’, said one woman in Gulu district,

‘we talk in our small groups and make development decisions; we discuss matters, such kinds of things they help us to forget. Such activities release us...they bring us together and in the process it forces unity among us’.¹⁵

In Agago, women explained that the farmers’ group had been set up to support the *Bol Cup*, rather graphically named, ‘*Okony too ateda*’ or (help the victims who were boiled), because often people do not have the money ‘*ber bedo*’ to contribute, so instead they will offer to help dig in the village.¹⁶ This is one of the ways we ‘live together peacefully and support each other’, explained one woman. In another area of Gulu district, the group was called ‘*Avinyo Malit*,’ (I feel pain), and began in 2002 as a way of enabling ‘members to cope with life and become economically self reliant.’¹⁷ Experiences of coping with the effects of war and of moving through post-conflict life were described without reference to what Veena Das calls ‘grand gestures.’¹⁸ Instead people talked about the constructive ways in which they could engage on a personal and communal level to generate enough material and social capital to survive daily challenges.

Those who had not been in captivity explained that the groups were open to all, and that returnees and non-returnees mixed well, but returnees tended to paint a more complex picture. One young man in Bobi sub-county who worked as a part-time *boda boda* driver explained that some of his friends from the Bush have joined the village credit and savings scheme but that,

¹⁴ These groups were commonplace before the war, and people explained that communal digging continues to exist but in a less structured form. For a description and analysis of pre-conflict Acholi Farm Work Groups in Southern Sudan, see Tim Allen, ‘Kwete and Kweri: Acholi Farm Work Groups in Southern Sudan’, *Manchester Papers on Development*, 3:2 (1987), pp.60-92

¹⁵ Author led discussion group, Lukodi, 25.07.2012

¹⁶ Author led discussion group, near Omot, 02.08.12

¹⁷ Participant observation, Bobi sub-county, 23.08.2012

¹⁸ Veena Das, ‘Life’, p.7

‘it is actually hard for us who have been in captivity to access credit from those who have never been abducted. If I have a problem I use the mutual trust from within ourselves (the formerly abducted) to borrow money. We trust each other since we share similar experiences and have solidarity. We are all the same.’¹⁹

Across research sites, returnees spoke of these loose-knit and informal groupings. These were described in very positive terms by those involved. Activities ranged from talking to praying together to small income generating activities such as shared digging, or roasting of maize and peddling of cassava. One young woman explained that:

‘when we sit together, I feel so comfortable because I know I am accepted but when I am with those that were never in the Bush, I feel that at any time I will be discriminated against, so I am not at liberty’.²⁰

In both Nwoya district and Amuru district returnees described these informal connections as a key way by which they were coping and moving on with life, both materially and emotionally.

There exists, then, a range of groups and associations - some externally supported, but more commonly not - that have been formed to address the unmet needs of people as they try to move through life. These resemble in their various forms the savings and loans groups and farmers groups that pre-dated the conflict. Thus they are a continuation of local methods of self-help and income generation, but the function now extends to providing some form of non-material comfort too. Even in the cases where this non-material agenda was more formalized, such as in Atiak and Lukodi, through methods like memorial prayers and ‘storytelling’, the leadership of the group still had to ‘vernacularise’²¹ the donor and NGO agenda to make it meaningful and worthwhile to the local population. The role that these groups played in interactions between returnees and non-returnees was more ambiguous. In some cases the groups were constituted in a way that reproduced the divisions created by the conflict. In other instances, non-returnees explained that the savings and loan groups facilitated spontaneous interaction with former LRA members based on shared ideas about generating income or meeting other daily pressures. Of course, not everyone was involved in these groups, nor do they comprehensively alleviate the shared deprivations that overshadow peoples’ lives. Despite this, it was notable that when asked how people

¹⁹ Author interview, Bobi Sub-County, 23.08.2012

²⁰ Author led discussion group, Purrongo sub-county, 15.08.2012

²¹ ‘Vernacularise’ was a term coined by the anthropologist Sally Engle Merry to describe the process whereby international norms and ideas are re-shaped and made relevant in local contexts. See, Sally Engle Merry, *Colonizing Hawaii: The Cultural Power of the Law* (Princeton: Princeton University Press, 2002).

live together and how they cope, it was these groupings, based on stated priorities of improving immediate material conditions and ‘coping up’ that were emphasized.

Transitions, spirits and social healing

When people are asked to describe the kinds of interventions that might facilitate the settling of past accounts and aid a peaceful transition from war, a range of possibilities are raised, most of which center on tangible socio-economic goods. In the six research sites, these included scholarships for orphans, help with school fees, better health clinics, better roads, better livelihood opportunities, re-stocking of looted cattle, and better HIV/AIDs services for women who had been raped.²² These demands were articulated as entitlements rather than requests, and they were envisaged as a way of catching up with the rest of Uganda. As victims of a war that lasted too long, people strongly asserted the exceptional nature of their needs as being over and above what was already being allocated elsewhere in development aid programmes such as the PRDP. Compensation, as one NGO worker put it, is the ‘the common language that victims speak’²³ and it is often described by people as something tangible that the government can do help them ‘forget’ the dreadful experiences they have suffered. As one young man in Omot sub-county explained,

‘We are trying to forget the pain of the past but there is another disease which is poverty, much as you try to forget everything, you recall that those days you had cattle, you had land, but now all has gone. So the problem now is poverty. You are in poverty now.’

There is in this sentiment a refusal to honour the historical breaks between war and peace that external analysts impose. The notion of transition is too clear-cut to adequately express the structural deprivations that fasten the past to the present.

The focus of ordinary people on the problems they faced in their daily lives *currently* upends orthodox transitional justice narratives, guided as they are by a basic structuring image that is essentially linear and material. The reality in northern Uganda is that seemingly key events like the disbanding of the camps or the silence of the guns do not

²² These are also raised as priorities in the UN Human Rights, ‘Dust’.

²³ Author interview with NGO staff member, Gulu, 24.07.2012

form the ‘main axis of life’ for many.²⁴ The same can be said of more immediately dramatic and extreme events such as massacres. Transitional justice places too much emphasis on ‘events’, on moments of exceptional physical violence, or moments of apparent ‘transition’ from war to peace, and ignores the fact that, in the Acholi context, these are episodic instances of extreme suffering or momentary relief that punctuate an almost permanent state of sustained neglect, discrimination, and insecurity.²⁵ People in Acholiland were largely relieved to be back in their villages, and that the immediate threat of systematic LRA and UPDF violence has subsided, but they remained in a state of subjection, and often of crisis and fear: trapped in endemic poverty, bad health, the premature deaths of children, shortened life spans, violence against women, and limited choices.²⁶

Indeed during group discussions, a temporal disjuncture was apparent between transitional justice conceptions and local understandings of time, space and misfortune. Donor support for transitional justice envisages a linear ‘clock time’, which comprises a before and an after, so that violence was in the past; resolution and healing exist in the present and future.²⁷ This conception of time, as Victor Igreja has argued in the context of post-conflict Mozambique, contrasts with the ‘multiple temporalities’ that people experience in their everyday lives.²⁸ For many, as Igreja points out, war time violence ‘remains a part of their diurnal and nocturnal nightmares’ and it intervenes in both predictable and unpredictable ways, through *cen*, the ‘unhappy spirits’, usually of people who died violently or who had some physical connection with a place where violent events had occurred.²⁹ The dynamic and cosmological significance of these processes are not captured by the externally supported ‘traditional justice’ agenda discussed in the previous chapter. In all six of the research sites, people made reference to the ‘*cen*’ spirits that were disturbing them, making them feel deeply unsettled and uncomfortable in their

²⁴ Miroslav Vanek, ‘Those who Prevailed and those who were Replaced: Interviewing on both sides of a conflict’, in Donald Ritchie (ed) *The Oxford Handbook of Oral History Handbook* (New York: Oxford University Press USA, 2012) p. 49

²⁵ Paige Arthur highlights the uneasy relationship between human rights violations and ‘long-term’ discrimination in ‘Introduction’ in Paige Arthur (ed), *Identities in Transition: Challenges for Transitional Justice in Divided Societies*, (Cambridge: Cambridge University Press, 2009) p.1-14 at 9-10

²⁶ *ibid* at 10

²⁷ Victor Igreja, ‘Multiple Temporalities in Indigenous Justice and Healing Practices in Mozambique’, *International Journal of Transitional Justice*, 6:3, 2012, pp.404-422, at 407

²⁸ *Ibid* p.407

²⁹ *Ibid* p.408; for a more detailed definition of the concept of *cen* see, Porter, ‘Rape’ p.99;

surroundings. In Nwoya district, villagers explained that ‘the gun is silent but there is no peace yet’. One woman said that,

‘a lot of people were killed around here and at night you do not see anybody but you hear voices calling people. In my home, there are strange voices in the night that call names. Until tomorrow it will still be happening. Calling the names of the people who are gone.’³⁰

Others in the group described similar experiences. A particular problem in the area had been at the local primary school, which was a barracks during the war. Villagers recounted how at night, ‘spirits come and strangle teachers in the night and also the children of the teachers.’³¹ One teacher was apparently strangled so badly that in the morning, ‘his neck was swollen and his eyes were almost coming out.’³² *Cen* and spirits of the dead transcend and decompose the barriers of linear time, and give form to people’s daily experience in Acholiland. For the many who have died and never been identified or undergone a proper burial, their spirits are believed to be ever present, vengeful and destructive. One man in Gulu District described the unburied bones vividly as being like ‘unexploded ordinances.’³³ Indeed, the way in which spirits intervene can be as violent, disturbing, and sudden, as the violence perpetrated by living combatants during the conflict.

Ritual action is used widely across Acholiland in an attempt to cleanse and appease the spirits, and to heal the cosmological legacy of the war but the way in which it takes place in the absence of donor or NGO support is varied. It can be improvised, and even unpredictable. In order to avoid falling into yet another ‘ethno-justice’ trap, it should be noted that there are broad constituencies of people who eschew such methods – most notably Pentecostal Christians, who refer to themselves as ‘born agains’. There are also those who accept and welcome ritual as a part of the social texture of rural Acholi life, but who openly keep a sort of respectful distance from it: this is often young men and women, who explain that their own elders never shared with them the function of these processes, and that camp life prohibited cultural learning. This did not equate to rejection of ritual and other cultural mores, it was more a statement of fact than a statement of belief: this was not in their jurisdiction presently and in the future perhaps it might die out altogether.

³⁰ Author led group discussion, Purongo sub-County, 15.08.2012

³¹ Ibid

³² Ibid

³³ Author led discussion group, Gulu District, 27.07.2012

There was certain nomenclature that came up at every research site, and is worth mentioning here. The stepping on the egg (*nyomo ton gwen*) ritual was performed widely at household level when an LRA member returned from the Bush and rejoined the family. The purpose of the ceremony was to ‘cleanse’ the person who had been away from the home for a long period from spirits that he or she may have come into contact with which might bring misfortune to the wider community. An egg is used because it is considered to be innocent. One man described the curvature of the egg, and the fact that it has no mouth and no beginning or end.³⁴ It is normally placed between a split branch from the *opobo* tree which is moist and signifies the washing away of dirt. Beyond that there were many variations; in Agago for example, elders explained that during the process they use traditional cigarettes to ‘puff and spit on him’ and then ‘get some soils and begin to proclaim positive things in his life’.³⁵ In three of the research sites further cleansing took place immediately after the stepping on the egg, and involved the ‘ritual washing’ of a returnee with blessed water, followed by the sharing of a meal prepared by the returnee’s mother. In Gulu district this was described as ‘*Moyo Kom*,’ involving the slaughter of a goat and the ‘washing away of tears’ (*lwoko pik wang*) that have been shed during mourning, when it was believed that the returnee had died in the bush. It is believed that if those tears are not washed away they will bring misfortune to the returnee.

In every research site, animals had been sacrificed in order to cleanse impurities that lead to misfortune. In Agago District people made reference to a recent example of ‘*Mony Piny*’, the cleansing of a particular area where specific incidents were recurring. This involved the sacrifice of a sheep on a small hill, where regular lightning had been disturbing people. There was a consensus among the village elders that this was being caused by *cen* linked to ‘what happened up there during the war’.³⁶ In this instance it was explained that the cutting of the sheep releases cold and ‘innocent’ blood which drives away the evil spirits. In Nwoya District residents explained that because of the number of bones scattered around large areas, it was decided that *Ryemo Gemo* must take place; this was described as a ‘chasing of spirits’ from a wide area, and again involved the

³⁴ Author led group discussion, Omot sub-County, 02.08.2012

³⁵ Ibid

³⁶ Author led group discussion, Omot sub-County, 02.08.2012

sacrifice of a sheep.³⁷ More commonly though, in discussions about spirits and cen, people just referred to need for ‘*tum*’. ‘*Tum*’ was defined broadly as a sacrificial act – usually the cutting or ‘slicing’ of a sheep or a goat that would cleanse the area of the social and cosmological consequences that might accrue from instances of wrongdoing. Holly Porter identifies a deep etymological significance in the word ‘*tumu*’, ‘cutting’ which, she argues represents the severing of the consequences of an act of wrongdoing from its ‘capacity to spoil social harmony’.³⁸ A common idea across Acholiland is the mutability, transcendence, and self-propagation of misfortune, if cleansing does not take place.

What was more apparent than regular ‘ideal-type’ rituals promoted by the traditional justice agenda, were the various improvised ways in which people dealt with cosmological insecurity. This often involved the mingling of traditional and religious processes. Often religious methods were trialed before moving on to traditional rituals which were described as being more resource intensive. In Lukodi, for example, an elderly woman complained that there were ‘bodies littered all around here and this is not good in our culture’, she said that her own son was being ‘disturbed by these spirits’ so she encouraged him to ‘lift up both hands and just proclaim the name of Jesus and say these things will not happen.’³⁹ In Nwoya District the case of spirits strangling teachers and their children in the night was dealt with by the head teacher, who called the executive committee of the school together. It was resolved that before turning to traditional processes, the group should pray together. According to the villagers, the prayer had successfully sorted out the problem at the school. When asked why religious prayers had been chosen over traditional ritual, one woman explained that ‘money is very important to mobilise traditional activities, but you know prayer can be done at no cost.’⁴⁰ In Amuru District people explained that traditional processes were helpful in individual cases of suffering and sickness, and were carried out in the homestead, often with the help of an *ajwaka* (diviner), but that problems afflicting the broader community were more aptly addressed by prayer.⁴¹ Interestingly, across the research sites people were very reticent about whether or not they used *ajwakas* (diviners) at times of serious

³⁷ Author led group discussion, Nwoya District, 15.08.2012. In his PhD thesis, Thomas Harlacher documents all Acholi rituals that play a role in healing some of those mentioned in this research are explained in more detail. See Harlacher, ‘Traditional’

³⁸ Porter, ‘Rape’, p.105

³⁹ Author led group discussion, Lukodi, 25.07.2012

⁴⁰ Author led group discussion, Nwoya District, 15.08.2012

⁴¹ Author led group discussion, Atiak, 08.08.2012

misfortune, and no-one volunteered this information spontaneously. When pressed, a common response was well encapsulated by one elder who said, ‘religion told us we cannot use them, so we are shy. But, it is quite common and if you skip it, it is to your own danger.’⁴²

There is a strong sense of flexibility and tolerance in how peoples’ response to misfortune is linked to the spirit world. On numerous occasions people explained that it was up to the family how they would like to proceed; some prefer ritual, some prefer prayer, and often they will experiment with both. For those people who held committed positions on the desirability of one process over the other, the argument tended to be that this would be resolved metaphysically. A worker at the World Vision reception centre in Gulu, for example, laughed at the thought that the ‘stepping on the egg’ would restore balance and stability to the war-affected communities, and expressed faux surprise when recounting how the family of a returnee came to her recently complaining that ‘the boy is still being stubborn.’ ‘Oh,’ she replied to them, ‘so the egg did not work!’⁴³ In contrast, in Kalongo town, a largely Catholic area, which boasts an impressive Catholic mission, and is a place where people are quick to say that they eschew traditional rituals, an elder laughed and explained that no religion can ever fully convert an Acholi. He had a complacent confidence about the role of traditional ritual in the regulation of Acholi life, ‘when the worst comes to the worst’, he said, ‘even the most devoted believer will backslide to tradition.’⁴⁴

Pentecostal Christians were most explicitly dismissive of traditional rituals, but even here there was acceptance that these things happen, and that they are meaningful to sections of Acholi society, even if the extent of this is sometimes underplayed. In Agago District, for example, LC3 councilors explained that traditional beliefs no longer served the function that they once had in their area,

‘when the war became too hot, people came close to God. When there was a lot of insecurity, people started to pray. People today, they go towards Christ and not the traditional leaders. Traditional leaders demand money, goats and chickens and they are even liars. People don’t want that. They go to Church. If you talk to God, your prayers are answered.’⁴⁵

⁴² Author interview, Gulu, 20.08.2013

⁴³ Author interview with World Vision staff member, Gulu, 02.10.2012

⁴⁴ Author interview, Kalongo Town, 15.08.2012

⁴⁵ Author interview, Agago District, 01.08.2012;

In the same breath though, it is accepted that, ‘you may not believe but members of your clan, they think it is the dead ones causing all these problems... and will conduct these things.’⁴⁶ The general acceptance that these things took place was widely shared; and within the same village – even within the same family – people had very different perspectives on what might work. An illustrative case was in Amuru District, where residents of one village were in disagreement over what should be done with a returnee who had been forced by the LRA to kill her own sister in the Bush, and was now committing all sorts of taboos, including walking around the village naked. Those ‘born agains’ in the village attributed the girl’s behavior to her failure to keep up with prayer and church attendance. This, they argued, had caused the spirits to start attacking her. A group of young men were not so sure, they were concerned about the growing popularity of born again Christianity, arguing that it ‘is only pain that drags people there, and they do not get the healing they are looking for.’⁴⁷ They felt that the only way to resolve the situation was for the elders to come together and make a sacrifice to appease the spirit of the sister who had been murdered. Despite the tendency for older men to disparage the ‘youth’ and their predilection for all things western, there was no clear generational divide between those who supported traditional practices and those who did not. What was clearer was that those who had supreme confidence in the efficacy of their own moral system to cope with the unknown and predictable, demonstrated a courteous restraint towards those who preferred alternative methods.

Ritual action was not always described in positive terms as restorative or healing. A group of returnees in Gulu town, for example, those who had decided to settle away from home, described how elders had ‘put many curses on perpetrators.’⁴⁸ This was described as *kiir*, the concept Okot p’Bitek defined as a curse, usually by someone who feels they have been wronged, which upends social relations. One example given was that the families of victims were burying the dead with their heads facing away from the family compound (as opposed to the normal practice which was to bury the dead facing inward) and in doing so, ‘the dead can send out curses and the curse goes back to the family of the perpetrator’.⁴⁹ Another example given by returnees in Nwoya District was

⁴⁶ Ibid

⁴⁷ Author led discussion group, Amuru District, 09.09.2012

⁴⁸ Author led discussion group, Gulu District, 25.07.2012

⁴⁹ Author interview with elder, Gulu Town, 20.08.2013

the practice of burying the victims with spears, again to direct them to wreak vengeance.⁵⁰

The liberal transitional justice paradigm is ill-equipped to deal with the dynamics of cosmological and spiritual practice in contexts like northern Uganda. As a field, transitional justice has not engaged sufficiently with the dynamics and power of the spirit world and 'its role in bringing the past to the present and threatening to jeopardize the future'.⁵¹ The traditional justice and reconciliation agenda, as argued in the previous chapter, also fails to capture the profundity of spiritual life in Acholiland and as a result it has failed to resonate. What is perhaps most disorientating to many external observers is that spiritual methods and needs are central rather than peripheral. They cannot be distilled, codified, and funded as add-ons to more formal transitional justice processes, because they comprise an entire meaning system: they are absolutely key to the way in which most people view the problems they face, and as prescriptions for how to heal individuals and communities and move on.⁵² Even if some people prefer religion to ritual, or priests over *ajwaki*, it is rare to meet someone who does not acknowledge spiritual causation in some form. It is quite clearly evident that for many people it is spirits rather than universal concepts of reason that arbitrate truth. Appeasing and reconciling with phenomena that cannot be empirically verified (i.e spirits) is a priority for many and it cannot be sidestepped.⁵³ As the Gulu district speaker explained, 'you can forgive or use these other western methods but there are still the spirits, we are all very concerned about the spirits'.⁵⁴ Perhaps a useful way for scholars to approach this is the through a rather radical concession that the transitional justice imaginary is not that different from the spirit world of the Acholi, in that both create their own 'powerful ghosts and fetishes'.⁵⁵

What is 'ordinary justice' in post-conflict Acholiland?

⁵⁰ Author interview with elder, Nwoya District, 14.08.2012

⁵¹ Igreja, 'Temporalities', p.419

⁵² There is an unfortunate habit in policy responses of trying to recognize the importance of ritual by codifying it. This does not reflect the flexibility of ritual practice. See for example Baines, 'Roco Wat'; Pain, 'Bending', and Harlacher et. al, 'Coping'.

⁵³ Erin Baines also discusses this in the context of northern Uganda, see Baines, 'Haunting'. Tim Kelsall discusses it in the context of Sierra Leone, see Kelsall, 'Culture'.

⁵⁴ Author interview, Gulu, 07.08.2012

⁵⁵ Simon Featherstone, *Post Colonial Cultures*, (Jackson: University of Press of Mississippi, 2005), p.141

The preference for compensation and reparation over criminal trials and other formal accountability processes, and the very clear role that cosmology and ritual action play in regulating moral and social order, have spawned an unhelpful propositional logic, with its intellectual roots in 19th century colonial statecraft, which holds that state sanctioned forms of legal accountability are not culturally appropriate in Acholiland because they are ‘western.’⁵⁶ This has become a conventional trope in transitional justice debates: that Africans prefer restorative justice arbitrated by traditional authorities or in accordance with ‘traditional’ concepts.⁵⁷ The aim of the following section is to depart from this form of essentialism through an examination of the public authorities people are using to resolve war-related land disputes in post-conflict Acholiland. A criticism of such an approach may be that transitional justice is qualitatively different from ordinary justice: it carries a different set of objectives and a different set of processes. Posner and Vermule, however, argue that analysts of TJ have ‘gone wrong through insufficient appreciation of ordinary law’.⁵⁸ Bearing in mind E.P Thompson’s maxim that law does not ‘keep politely to a level’ but permeates and is imbricated ‘at every bloody level’, this argument can be stretched further to encourage a better appreciation of ‘ordinary life’.⁵⁹ Given that TJ is contiguous with ‘ordinary’ justice and with the existing political settlement and social order in any given place, it is quite perplexing that so little is known about local justice provision in Acholiland.

Resolving war-related land disputes

This section focuses on the issue of land wrangles and disputes: the war-related issue that people say most affects their daily lives. This involves criminal damage, criminal trespass, removal of boundary marks, and threatening violence and assault. Displacement into the camps from 1996 onwards had an overwhelmingly unsettling impact across northern Uganda, where people’s identity is linked to that of their clan, and where the clan, in turn, as a collective, is signified by and structured around the communal, customary land to which it lays claim.⁶⁰ Camp life was impoverishing and unproductive, and on people’s return to the villages, access to customary, communal land was the only ‘productive asset’

⁵⁶ See for example, Pain, ‘Bending’, Baines, ‘Roco Wat’, Lomo and Hovil, ‘Violence’, Latigo, ‘Northern’.

⁵⁷ Archbishop Desmond Tutu is the most well known advocate of this approach, see, Desmond Tutu, *No future without forgiveness* (London: Rider, 2000).

⁵⁸ Posner and Vermule, ‘Ordinary’, p.3

⁵⁹ Gordon, ‘Legacies’, p.2007

⁶⁰ Hopwood and Atkinson, ‘Mapping’, p.14

most people could rely on.⁶¹ The securing of this access has been subject, however, to many pressures and difficulties, ranging from confusion and disagreement over pre-displacement land boundaries between households, to controversial attempts by the Government to open up Acholi land to investors for large-scale commercial farming.⁶² Given that land is the ‘epicenter’ of social, economic, and cosmological life, disputes related to access, boundaries, and ownership affect the ‘rest of life’ profoundly.⁶³ As one man explained, ‘if you really want to mess with the Acholi, you play with their land.’⁶⁴ In northern Uganda this represents a huge transitional dilemma that people are actively seeking to resolve on a daily basis. As a senior Acholi donor staff member explained, off the record,

‘resolving transitional issues is a priority for people, but not the way donors understand it. In Acholi a lot of time is spent on resolving tensions and conflict, especially over land. This is a key framework through which people are negotiating life. But that is not the transitional justice which is discussed in public forums in Kampala and Gulu and if you are looking for that you are missing something.’⁶⁵

His point was that transitional justice - as a set of pre-articulated conceptions - was not the right entry point through which to explore, let alone understand, the dynamics of post-conflict justice and social repair in Acholiland. Equally, as is argued below, an examination of the way in which war-related disputes are being resolved on a daily basis elucidates and complicates assumptions inherent in prevailing transitional justice conceptions.

Three main findings are clear. The first is that donor and civil society promotion of the KKA and traditional chiefs as Acholi public authority figures is out of sync with the way in which social order is actually regulated. The second is that arguments which suggest that there is a cultural aversion to formal/retributive justice misunderstand the deeply hybrid nature of current justice arrangements in Acholiland, and over-simplify the relationship between the Acholi and the state. The third and related point is that Acholiland is not a blank justice slate. Systems are in place which people use and

⁶¹ Hopwood and Atkinson, ‘Mapping’, p. 17

⁶² See Hopwood and Atkinson, ‘Mapping’, for an excellent account of the range of current land disputes and discussion of their causes.

⁶³ Gareth McKibben and James Bean, *Land or Else: Land-Based Conflict, Vulnerability and Disintegration in Northern Uganda*, (International Organisation for Migration and United Nations Development Programme: 2010) p.7

⁶⁴ Author interview with former sub-County chief, Bungatira, 25.07.2012

⁶⁵ Author interview, Kampala, 22.05.2012

generally regard as being legitimate and efficient. This complicates donor arguments which link transitional justice to rule of law strengthening through institutional and capacity building support. The assumption that Acholis are generic justice seekers waiting for access to state-backed justice systems does not take into account the justice choices that people are already making, and why.

An examination of who the 'principal providers' of redress and settlement are in land cases gives important insight into how justice acquires meaning in local settings.⁶⁶ Across research sites the vast majority of people who made reference to land-related disputes explained that they were between households at the village rather than the parish level. As Julian Hopwood has pointed out, 'the law is largely silent on matters of customary land,' and 'decision making authority is vested in clan, sub-clan or extended family leaders'.⁶⁷ In land cases, people overwhelmingly said that they would first consult clan elders who were familiar with the old, pre-conflict boundaries, and if the elders could not resolve the issue or were no longer alive, either the *Rwot Kweri* or the LC1 would be consulted. This was interesting because both roles are modern formations. The *Rwot Kweri*, as was discussed in Chapter 3, is a 'chief of the hoe', an elected or appointed local customary leader who provides leadership and arbitrates over issues of land, farming and agriculture in sub-divisions of LC1 villages. The LC1 on the other hand is an elected political representative, albeit at the lowest level of the decentralized local government system.⁶⁸ As described in Chapter 3, in the early days of the NRM, the LCI figure was regarded with some suspicion in the locality as a government interloper and enforcer, but is now generally regarded as a trusted arbitrator of local concerns.⁶⁹ Elders, *Rwodi Kweri*, and LC1s, derive their authority from different sources, and have contrasting relationships with the Ugandan state, yet they share a perceived ability to arbitrate on

⁶⁶ 'Principal Providers' is a term used by Baker and Scheye, 'Multilayered', p.6

⁶⁷ Julian Hopwood, 'Elephants Abroad and in the Room', Draft JSRP Mapping Paper for the Acholi (unpublished) p.14-15

⁶⁸ The positions of both the LCI and the *Rwot Kweri* are unclear under the Ugandan Constitution. The *Rwot Kweri* is not recognized by the Ugandan state but his functions are permitted under the section of the Constitution which allows for the settlement of disputes before customary authorities. Meanwhile, ever since the introduction of multi-party democracy in Uganda in 2006 it has been unclear what constitutional role the LCI plays in local politics and in the arbitration of disputes. The legal function of the LCII courts was officially suspended in (x). LCIII courts now stand as the first 'formal arbiters' of customary justice related to land issues. Information in the para was derived from field research and also Porter, 'Rape', p.113-4 and Hopwood 'Elephants', p.14-15

⁶⁹ Porter, 'Rape', p.115; Julian Hopwood, 'Women's Land Claims in the Acholi Region of Northern Uganda: What can be learnt from what is contested', *Justice and Security Research Programme* (Forthcoming).

cases based on unwritten customary law. This was usually because of physical presence and deep knowledge of the area, rather than kinship affinities or authority status.

Thus the highly local order of Acholi society creates a sliding scale of legitimacy in justice institutions. The choice of who to turn to depended on the proximity of the authority to the location of the dispute, the perceived integrity of the individual, his range of relevant knowledge, and the degree to which he is both trusted by the community and nested within it. What was striking was that situations resolved at this very local level (elders, Rwot Kweri or LC1) were rarely contested openly. As one informant in Lukodi explained:

‘if the dispute starts at a small level we normally go to the nearby elders. Sometimes we cannot even involve the LC1. If it is big you will go to the LC1. Others might raise it at the sub-county but mostly we have been handling issues that stop at the level of the LC1. People get satisfied with the rulings. I have never heard of anyone going to the level of the magistrates.’⁷⁰

This did not necessarily mean that decisions were universally accepted (as will be explored in more detail below), but it did support the argument put forward by Atkinson and Hopwood that the overall number of discrete rural land disputes has been ‘declining significantly’ due to ‘high resolution rates’ arbitrated by elders and lower level councilors and courts.⁷¹

What people emphasized frequently was the great asymmetry of information that existed between those authorities who were closely acquainted with the geographical area under dispute and those authorities whose role and function transcended the immediate context. Indeed preferences were not so much ‘culture-bound’ as they were ‘context-bound’, so that any authority outside of the immediate locus of the dispute was viewed with some trepidation.⁷² Even the LCII, the local Parish chief, is talked about as coming ‘from a far distance’ and ‘not knowing the history of the area.’⁷³ As an authority figure he may be a member of the broader community, but he is also more tangential to the symbiosis of village life, and therefore more prone to misinterpretation, misinformation and corruption. Similarly, despite their valorization as the custodians of customary law

⁷⁰ Author led discussion, Lukodi, 25.07.2012

⁷¹ Hopwood and Atkinson, ‘Mapping’, p.i

⁷² Mahmood Mamdani makes described colonial ideas relating to law being ‘culture’ and ‘context’; although the argument I put forward is different here, see Mahmood Mamdani, *Define and Rule: Native as Political Identity* (Cambridge: University of Harvard Press, 2012) p.19-20

⁷³ Author led discussion, Agago District, 02.08.2012

and culture, not one person mentioned the Ker Kwaro Acholi chiefs as figures they would turn to in the event of a dispute.

The distinction people made between the knowing and the un-knowing, the legitimate and the illegitimate, complicates understandings of Acholi attitudes towards the state authorities, which arguably amounts to more than an abstract lack of trust. Respondents did not express a cultural aversion to formal legal institutions (which begin at the level of the magistrate), inasmuch as they expressed qualified concern about any institution that was not equipped to act in their interests. This could be a corrupt elder, or a distant chief, just as much as it might be an incompetent local magistrate. It was the issue of efficiency and positive outcomes that people raised most emphatically, what Baker and Scheye call 'performance accountability.'⁷⁴ In Odek sub-county, during a discussion group about local disputes and their resolution (or not), people were asked whether they would like to have their cases heard in magistrates courts, if the opportunity were there. The predictable response would have been negative, based on preconceived notions of mistrust and fear of state structures. The actual response was as follows:

'No, we would not like to go to a magistrates court, even if it was here, right here and we had the money'.

'Is it because you do not trust the courts to rule fairly?'

'Not because of trust, no. It is because it is pointless. It is because the people who know the boundaries are already here, among us. It is a local thing'.⁷⁵

The word 'pointless' is interesting here and it reflected a more general sentiment about the superfluity of rules and practice that were not rooted in the relevant context. This was hardly surprising as the disputes arise in situations where, as Judith Scheele notes, people rarely deal with 'abstract things or with abstract people, but rather with neighbours, family members and in-laws.'⁷⁶ This is particularly the case with land, where

⁷⁴ Baker and Scheye, 'Multi-layered', p.508

⁷⁵ Author led group discussion, Gulu District, 27.07.2012

⁷⁶ Judith Scheele, 'Rightful Measures: irrigation, Land and the Shariah in the Algerian Touat', in Dresch and Skoda, 'Legalism', p.201

validity of claims depends ‘less on universal truth than on neighbour’s opinion’⁷⁷ but is also relevant for other disputes arising from acts of wrongdoing, as Holly Porter has shown in her study of responses to rape and gender violence in Acholiland. People grapple with the ‘generality’ of the law and its universality because these properties stand in tension with the highly place and circumstance-specific way in which rightful order is maintained. The discernable utilitarian and pragmatic approach to the resolution of issues should encourage us to re-direct attention away from the orthodox conceptual boundaries between customary and formal, traditional and modern, and towards what Donald Davis describes as a more pluralist model which un-binds and re-conceptualises the notion of jurisdiction so that it is viewed not just as a ‘bounded area within which legal authority can be exercised but rather as a capacity to “speak the law”’.⁷⁸ Indeed if we are able to distinguish between ‘rules’: i.e the customary and the formal and ‘practice’, i.e the way that these rules are implemented and by whom and in what context, it is possible to avoid slippage in the conceptual analysis that tends to conflate the two and create the rigid distinctions that do not always operate in practice.

The risk in conceptualising justice as ‘context-bound’ is the suggestion that modes of resolution are deeply parochial. People appear, however, to embed their justice decisions in a logic that is cognizant of the wider world, exhibiting what Hart once referred to as a ‘critical reflective attitude’ about how the world is.⁷⁹ This in turn, confers meaning on the sort of actions that will allow or threaten what Lon Fuller called a ‘programme for living together’.⁸⁰ The resolution of disputes and wrongdoing is a practical, utilitarian and consequentialist process in which wrongdoing and punishment are defined and determined by context and circumstance. It is interesting to note, therefore, that in the urban areas where research was conducted, where systems of mutual economic and social support and obligation were looser, there was widespread support for police intervention and trials in cases of theft. Indeed Gulu’s State Attorney lamented the fact that the traditional system was not functioning adequately in relation to these crimes in urban areas.⁸¹ It was also the case that for those groups who felt dislocated and marginalized in their home communities, it was more likely that they would choose

⁷⁷ Scheele, ‘Rightful’, p.197

⁷⁸ Donald R. Davis, ‘Centres of Law: Duties, Rights, and Jurisdictional Pluralism in Medieval India’, in Dresch and Skoda, ‘Legalism’, pp.85-115; Skoda, ‘Historians’, p.45.

⁷⁹ cf. Dresch, ‘Legalism’, p.12.

⁸⁰ *ibid.*

⁸¹ Author interview with Resident State Attorney, Muwaganya Jonathan, Gulu, 27.09.2012.

external organisations, particularly NGOs, to help them mediate their local disputes. The IOM, for example, has reported that 50 per cent of all succession and inheritance cases between August 2003 and October 2009 were filed by young adults between the ages of 18-30, who no longer felt protected by the customary rights arbitrated by elders in their own communities.⁸²

Implications for transitional justice

What the above suggests is that the decision to refer a dispute and seek redress is premised on the available information, a realistic assessment of the likelihood of a tolerable outcome, and the consequences of that outcome on moral, cosmological, and social stability. As will be explored below, it is the uncertainty relating to these three premises that make peoples' attitudes towards state-led or externally supported transitional justice for wrongdoing perpetrated by the GoU and the LRA, so ambivalent. Whether or not amnesty, trials, truth-telling, or external funding for *mato oput*, are preferable options or not, remains largely unresolved in the minds of most people. In fact, when asked, most people today stress the deeply complex implications of such processes, and emphasise their lack of power in the ability to shape their direction.

An illustrative example came to light during a discussion with an elderly woman in Kalongo town in the eastern-most part of Acholiland. She began by explaining how petty theft was the major security issue affecting her life and that it was being perpetrated by young men who had grown up in the camps and could not be bothered to work. She then emphasized that suspected criminals should be reported to the police and punished, preferably with a prison sentence and a fine. This seemed to jar with an earlier part of the interview in which she expressed her desire to forgive LRA perpetrators for the violent crimes they had committed, even against her own family. When this apparent contradiction was explored further, she explained that,

“These are two different things. The ones who killed on a larger scale, like Joseph Kony, should his life be lost because of all the others he killed? It does not make up for the loss of life that he caused. Those of Kony and his group is different. The impression we have is that it is beyond our means and we just need to forgive them. The LRA killed two of my children and my husband but one of them lives with us here in the village now, there is nothing I can do, they just come and settle down. But that other person, that thief, he came and stole my

⁸² Mckibben and Bean, 'Land', p.19

things and it is good to punish him because those thief's have taken my things three times now. Those of Kony and his group are different, but this case of mine, it is from home.'⁸³

When prodded a bit further on whether or not she would support a trial for Joseph Kony if he were captured, she again expressed a sense of incapacity and impotence, as if the issue was too 'far from home' metaphorically speaking and therefore too latitudinous for adjudication, saying that:

'We are people at a household level and we do not have power over that. If it was marriage, if Kony wanted to marry one of my daughters, I would not accept it. Forgiveness I might grant him would be that he cannot marry from my home. That would be impossible and I could never accept. He can come and dig.'⁸⁴

Her response turned the issue on its head and expressed her feelings towards the LRA leadership through the institutions over which she had some jurisdiction and control. It also highlighted a broader tendency to make a distinction between governable and ungovernable justice spaces.

The LC1 in the same village had a remarkably similar opinion on things. He explained that when a mattress was stolen from his hut recently the thief was chased into town by a mob who beat him so seriously that he almost died. When asked about punitive accountability for crimes committed during the war his attitude shifted, and he explained 'well, my opinion cannot reach to the level of government. People have just surrendered all these things.'⁸⁵ In many ways, perhaps, this was an expression of 'transitional justice', an acknowledgement that justice for crimes committed during a conflict require a different approach from those committed during peacetime. People also pointed out of course that there was an Amnesty Act in place which although championed by the local traditional, religious and political leadership, was also regarded as a government measure, regulated and controlled in a faraway place. The way in which people framed their 'powerlessness' however, is worthy of further examination, because it was defined in oppositional terms, against the agency they possessed in their immediate locales and because of this it actually became more apparent as a strategy. The reticence people assumed is captured well by two particular variants of Roger Mac Ginty's concept of 'non-participation', which posits a conceptual alternative to 'resistance' and 'compliance'

⁸³ Author interview, Kalongo Town, 30.08.2012

⁸⁴ Ibid

⁸⁵ Author interview, Kalongo Town, 30.08.2012

towards international and state interventions into daily lives.⁸⁶ Across research sites in Acholiland two particular forms of non-participation became quite apparent in relation to transitional justice. The first was more noticeable in relation to discussions about crimes committed by the LRA, and was a form of ‘voluntary non-participation’, described as a ‘rational choice, a utilitarian calculation that participation will bring few benefits’.⁸⁷ Because people rarely identified a clear link between criminal accountability for LRA war crimes and material improvements in their own lives, or greater cosmological or physical security, they actively disengaged from the topic on the basis that keeping a ‘low profile’ would better serve ‘the goal of long term accommodation’.⁸⁸ Voluntary non-participation in debates about criminal accountability thus carried clear, practical benefits. It was not uncommon to hear people bat away suggestions of criminal accountability for LRA perpetrators with comments like ‘I have no problem with the LRA’, or, ‘just let them come so we have peace here’.

Of course, this ‘denotes a degree of agency’ but it was often combined with another sense of ‘involuntary non-participation’ which came to the fore during discussions around UPDF crimes and accountability. This, Mac Ginty describes as ‘acculturation’, the idea that norms of non-participation are deeply structural, they are ‘embedded in the thought and behavior patterns of individuals and groups’ and are thus difficult to shift.⁸⁹ While people expressed a strong desire to see UPDF soldiers and government officials prosecuted for war crimes and theft, these remarks were always caveated with assertions of powerlessness: people felt disqualified from participating in these debates because they had ‘no power,’ and because ‘this would never happen.’⁹⁰ Government and UPDF accountability was an aspirational, perhaps unobtainable desire and a vision of a more equitable future, while LRA prosecutions represented something far more ambiguous and de-stabilising, perhaps because the prospect was more real and the likelihood of instrumentalisation and manipulation were immediate. The important caveat is that support for the trial of Thomas Kwoyelo was quite evident among many of the people directly affected by the violence he allegedly perpetrated. Their support was linked to a tangible opportunity structure and thus criminal accountability shifted from presenting

⁸⁶ Roger Mac Ginty, ‘Between Resistance and Compliance: Non-participation and the liberal peace’, *Journal of Intervention and State-building*, 6:4 (2012) p.167-87.

⁸⁷ Ibid, p.174.

⁸⁸ Ibid.

⁸⁹ Ibid, p.176.

⁹⁰ Author field notes, Acholiland, June-October 2012.

itself as an alarming and ungovernable ‘spectre’ to something that could actually address people’s justice needs.

Generally though, state-led transitional justice processes, as promoted by donors and JLOS, are a red herring to most people. This was not because of a cultural aversion to formal justice, nor was it fatalistic. It was pragmatic and based on a clear understanding of the hegemony of the NRM and its narrative about the LRA war. For most people, the lived experiences of the ICC, the ICD, and the truth commissions for those who remember them, were that they were biased and, or, ineffective. It was not considered practical or wise to separate the processes themselves from the deeply unequal political environment in which they would operate. This is not to say that they were not supported in theory, rather that people were deeply dubious about them in context. To equate transitional justice with peace, accountability, reconciliation, and healing, is to ‘implicitly assume effective and equitable governance’, and people in northern Uganda, understandably, rarely make that assumption.⁹¹

The relationship between the community affected by violence, and the state responsible for delivering transitional justice, should be central to calculations of donor support, yet, as chapters five and six have argued, as a political consideration it has not really figured. In discussions with people about the role that the state can play in criminal accountability for war crimes one gets a strong sense of the inner tension that such questions pose. People shifted about, sometimes they sighed or laughed, other times they became agitated. Their spoken and physical reactions expressed a sense of what Kirsten Campbell has called the ‘trauma of the law’: the torment of an incorporeal ‘justice’ that is mediated in far away places by people who cannot be trusted, and which brings no immediate material benefit. The ‘trauma of the law’, writes Campbell:

‘is that it cannot represent justice. The trauma of justice is that it is a juridical impossibility... justice requires a fundamental change to the social order which made possible the originary trauma of crimes against humanity. In this sense, justice remains an event to come’.⁹²

The long-term nature of this realization is something that people understand, and it has informed their strategies of non-participation. Indeed, as well as the impression that TJ

⁹¹ This point is made in relation to the land titling debate in northern Uganda but is also relevant here cf. Atkinson and Hopwood, ‘Land’, p.7

⁹² cf. Weinstein et al, ‘Vengeance’, p. 37

in Uganda can never be fair, people also talked frequently about there not being enough ‘time’ to push for it. Acholiland, said one elderly man, has been like ‘stagnant’ water for twenty years.⁹³ People, younger people included, worried that their lives were being wasted; they were getting older and could not sacrifice any more of their resources on broad political questions or projects. People’s attitudes towards the state were complex: there was a desire to castigate, but also a recoiling force which is located in people’s own marginality.⁹⁴ It is too simplistic to claim that the state is ‘absent’ in people’s everyday experiences, because it is highly present as a concept in people’s imaginations. Of course, decentralization and the LC system means that the apparatus of the state, in a hybrid form, seeps down right to the village level. But more amorphously perhaps, people use the state as a reference point to lament their exclusion from key social and economic goods. As Salwa Ismail noted in her work on Egypt, citizens ‘come to experience the state in the ways in which it does not exist for them, and not just the ways that it does’.⁹⁵ It was not the state as a concept that was criticised, but its failure to function well in people’s everyday lives. In the absence of political transition, if the state was going to function at all, people wanted it to deliver services and material compensation for what they lost during the war. This was felt to be something tangible that the government could provide, and it was one of the reasons why the NRM did relatively well in Acholiand in the 2011 general election. The result, lauded by the NRM as proof that the Acholi had finally come to their senses about who the bad guy was, could also be interpreted as a pragmatic choice after so many years of conflict. ‘The opposition rhetoric never changed our lives’ said one Acholi elder,

‘when the NRM said, if you vote for us we can work for you, we could buy into that because we saw what was happening with development in other parts of the country. Only the government has the resources to bring it, so we’ll see’.⁹⁶

The question is how do we make sense of such rich and textured attitudes around redress, accountability and justice? Firstly, it helps to conceptualise the political and socio-legal landscape in post-conflict Acholiland as an ecosystem marked by multiple opportunities and multiple constraints that shape individual and collective decisions about the most desirable and practical form of recourse to address the harms caused.

⁹³ Author led discussion group, Agago District, 02.08.12

⁹⁴ The idea of people locating their thoughts in their own marginality is borrowed from Shaw, ‘Forgiveness’, p.220

⁹⁵ Salwa Ismail, *Political Life in Cairo’s New Quarters: Encountering the Everyday State* (Minnesota: Regents of the University of Minnesota, 2006). Quoted in Sarah-Jane Cooper-Knock, ‘Your Child is Getting Killed This Side: Re-considering “street justice” in South Africa, *African Affairs* (Forthcoming).

⁹⁶ Author led discussion group, Agago District, 27.07.2012

The ecosystem that exists today is a compound of conflict, tradition, hybridity, structural inequality, and external intervention. The proportions of these features might vary from place to place and circumstance to circumstance. Some of the moulding factors, like NGO interventions, are sporadic, others are more or less rooted, like structural violence, and others are subject to constant negotiation, like the relationship between tradition and modernity. Because people live in a 'multi-layered' political and socio-legal system their justice choices, as far as they have them, might not be consistent.⁹⁷ Perceptions about the best mode of dispute resolution for example, may shift over time or it may depend on the intricacies of the issue at hand and its implications for 'the rest of life'. The protean approach people adopt towards justice is 'law in action', and it is something that western observers feel very uncomfortable with because it rubs up against their own subjective understanding of law and justice as a set of 'more or less formalized rules,' and instead presents the prospect of 'improvised responses to circumstances.'⁹⁸

Arguably all legal systems, including the ICC, are prone to this. What we have not managed to come to terms with is what to do when this is the premise of the system rather than its perversion. Until now there has been a tendency in the transitional justice literature and practice to attempt to ameliorate epistemological differences through procedural pluralism, hence the popularity of the idea of 'retributive' measures existing alongside 'restorative' measures. This conceptual division does not adequately take into account the substantive complexity around the choices that people make (or are forced to make), the outcomes of those decisions, and the complicated and often hybrid character of the authorities that are called upon to adjudicate. In cases of land-related disputes for example, the location, crime (or dispute), and the identity of the alleged victim are key, as are questions about 'what is available', 'what works and what will the consequences be?' and 'what can I afford?'⁹⁹ These considerations are, as was argued earlier, 'context-bound' rather than 'culture-bound'. The same questions apply in response to war crimes, and tell us a lot about people's attitudes towards the kind of redress they see as legitimate and feasible. If transitional justice interventions are to be relevant, they need to engage more seriously with practical justice provision and the concurrent dilemmas that are part of people's every day realities.

⁹⁷ The concept of the 'multi-layered' is borrowed from Baker and Scheye, 'Multi-layered'.

⁹⁸ Skoda, 'Historian's' p.43 - 44

⁹⁹ This paraphrases Baker and Scheye, 'Multi-layered', p. 515

Re-settlement? Re-integration?

This chapter has so far explored the various means by which people in Acholiland have been moving on with their lives and reconstructing social, moral and economic relationships in the aftermath of the twenty-year war. This has included self-help groups, dynamic and flexible spiritual practices and local justice practices designed to ameliorate the most fractious conflict related issue: that of land disputes. The final section of this chapter explores some of the factors that continue to place a strain on post-conflict relationships and argues that micro-level realities and local interactions have been shaped largely by the ‘political economy of survival’¹⁰⁰ rather than by more normative concepts of peace, forgiveness and reconciliation.

The returnee group is diverse. As an illustration, it ranges from the man, now in his mid thirties, who spent two weeks in the Bush in the mid-1990s, to the woman who was rescued in 2013 at the age 27, who had been in captivity since she was nine years old, and given birth to three children, the oldest when she was only twelve.¹⁰¹ Those who had a briefer experience in the Bush many years ago are, on the whole, less likely to see themselves in the ‘returnee’ category, although many do. The section below focuses on those who self-identified as returnees, and shared their experiences. As described in the last chapter, there was an observable trend across research sites for people who had spent time in the Bush to feel apart from their communities because of the circumstances they had faced and the treatment they had received. There do appear to be different experiences of the ‘stigma’ that was discussed in the previous chapter, and one important distinction is well illustrated by John Braithwaite’s conceptual division between ‘reintegrative shaming’ and ‘stigmatic shaming.’¹⁰² Broadly speaking, the logic of reintegrative shaming is essentially correctional and restorative, because ‘shaming’, the idea that you are under watch, has as its function the desire to gradually reintegrate the wrongdoer through re-adaptation to social norms. The requirement to ‘be normal’, discussed in the last chapter, is an expression of this. Stigmatic shaming, on the other hand, carries a logic based on rejection. Moral disapproval is focused on the wrongdoer

¹⁰⁰ Mac Ginty, ‘Between’, p.180

¹⁰¹ This refers to the author’s own sample.

¹⁰² John Braithwaite, *Crime Shame and Reintegration*, (Cambridge: Cambridge University Press, 1989); John Braithwaite, ‘Restorative Justice: Theories and Worries’ 123rd *International Seminar Visiting Experts Papers* http://www.unafei.or.jp/english/pdf/RS_No63/No63_10VE_Braithwaite2.pdf; ‘Revisiting reintegrative shaming’, *Criminology Aotearoa/New Zealand, Newsletter of the Institute of Criminology, Victoria University of Wellington* (September 2001)

rather than the wrongdoing, to justify the re-definition of conventional social and moral boundaries. This has the effect of excluding the 'wrong-doer' from certain social goods: these might be based on geography, i.e the redrawing of land boundaries and/or on genealogy, the rejection of a person and their dependents based on their kinship status.¹⁰³ Sometimes it might lead the excluded member to leave the community and set up a life elsewhere, while in other cases people remain but are marginalized.

It is to this form of 'stigmatic shaming' that this final section focuses on. The emphasis is on those people interviewed who felt rejected by their communities, and why this might have been so. The problem that many returnees faced was that they had very little control over the extent to which their very presence might bring what one elderly woman called 'disharmony' to their village.¹⁰⁴ This was especially the case for those individuals who represented the most significant strain on already fractured family structures. Not surprisingly this ties back into the fraught question of land and land-use in post-conflict Acholiland. Two recent reports, one for the IOM and another for the UNDP, describe a situation in which returnees face, in the words of the former, 'acute marginalization in relation to land access and reintegration'.¹⁰⁵ Despite recognised land rights in Acholi customary land tenure, disputes over land and the scarcity of land has resulted, according to Atkinson and Hopwood, in 'anyone with less than first rank land claims being unwelcome' or 'conspired against' by other family members.¹⁰⁶ Because of this, it has been estimated that at least two thousand former LRA have re-settled in Gulu town to 're-start a new life', although this is most likely a very conservative figure.¹⁰⁷ In 2012, Amnesty Commission staff in Gulu made reference to the 'many' who have moved out of the sub-region altogether, settling instead in the trading centres north of Karuma falls, along the main highway to Kampala.¹⁰⁸ Here they engage in small-scale business such as roasting maize for the travellers and truck drivers who pass through. 'These are places', explained one member of staff:

'where they cannot be disturbed. We re-insert them but there is stigma, land conflicts, for example your uncle has taken your land; and then you just choose to find your own way.'¹⁰⁹

¹⁰³ Dresch describes this kind of exclusion, 'Legalism' p.35;

¹⁰⁴ Author led group discussion, Odek sub-County, 27.07.2012

¹⁰⁵ McKibben and Bean, 'Land', p. 8; Atkinson and Hopwood, 'Mapping'

¹⁰⁶ cf. Hopwood and Atkinson, 'Mapping', p.16

¹⁰⁷ This figure was given by Amnesty Staff to the IOM in 2011 and was based on 'anecdotal evidence', McKibben and Bean, 'Land', p. 20

¹⁰⁸ Author interview with Amnesty Commission staff member, Gulu, 13.09.2012

¹⁰⁹ Ibid

The ability to choose to re-locate at least implies some agency, which raises an important question about what happens to those individuals who are denied their customary rights and who suffer from forms of stigmatic shaming, but who do not have the resources to move.

Women returnees, and particularly those who came back with children who were born in the bush, face particular difficulties. Indeed the position of women in rural Acholiland in general has been in flux since the conflict began. The ideal-type communal land system across the Acholi sub-region involves the patrilineal and patrilocal inheritance of land, and women's access to this land is usually determined by traditional marriage. The long period of displacement and the poverty it created has, as Hopwood and Atkinson point out, placed particular strains on the institution of marriage.¹¹⁰ It is now increasingly difficult for a man's family to gather the resources necessary to pay bride price (*luk*), and in the absence of this transaction the lineage status of women and their children, and women's rights to land use, have altered. Where the bride price has not been paid, women are more likely to be rejected from their husband's family on his death.¹¹¹ On the other hand, the lack of bride price payment also means that affinal relationships are less fixed and regulated. It is not uncommon for women to move from male partner to male partner in search of security, and often this means leaving children from previous relationships with their grandmother or the family of the maternal uncle. Indeed even where bride price has been paid it tends not to be considerable. This increases the opportunity for women to leave their husbands and return to the family they were born into, because the financial implications of re-paying the dowry are not so daunting.¹¹²

These status and lineage issues are intensified for women returning from the bush, and particularly if they came back with children whose paternal lineage was unclear. 'A common thing you hear from the community,' said an Amnesty Commission worker in Gulu, is 'we want our daughters back but not these bush children.'¹¹³ This suggests a

¹¹⁰ Atkinson and Hopwood, 'Mapping', p.13-17

¹¹¹ This trend is also identified as a consequence of HIV/AIDs, see Atkinson and Hopwood, 'Mapping', p.15

¹¹² Hopwood and Atkinson provide an interesting discussion of these dynamics, 'Mapping', p. 14-15. These shifting dynamics have probably increased the significance of matrilineal connections presently and will almost certainly have that effect in the future because it is estimated that currently thirty percent of households in the Acholi sub-region are estimated to be 'female headed', see McKibben and Bean, 'Land', p.8

¹¹³ Author interview with Amnesty Commission staff member, Gulu, 13.09.2012

different picture from that presented by Blattman et. al's widely cited 2007 Survey of War Affected Youth (SWAY), which used mixed-methods to understand the impact of war on participants, and found that 'forced marriages and motherhood are not consistently associated with lower rates of family and community acceptance'.¹¹⁴ The problem with the SWAY project was that it quantified individual interactions at a moment in time. There is arguably, however, a vast open space of possibilities between being 'welcomed' home by your family, your children 'looked after' by their grandparents, and the quality of your life, your social relationships, and the opportunities open to you.¹¹⁵

It was striking that of the twenty-three returnee women interviewed, twenty-one had problems accessing land, and all expressed insecurity over their relationship with their male partner. In each case the women blamed their difficulty in accessing land on the fact that they had been in captivity. A particularly painful case was the story of a woman, Atim Mercy,¹¹⁶ who had been married to one of the LRA high command, a man wanted by the ICC who, according to her, had the habit of stamping on her chest so regularly and with such force that she lives in permanent discomfort. She was in captivity for eighteen years and had given birth to three children whilst there. On her return, she became involved with another man so that she could have access to his ancestral land. Mercy needed land to cultivate, she said, because when her father died three years previously, his family conspired to take away his land from her mother, so that she had only a very small plot now. Her mother suffers from HIV/AIDs and is now responsible for caring for Mercy's three children, because her new husband will not accept them into his home. Quickly Mercy became pregnant again but the new husband, who has not paid a bride price, beats her regularly and calls her *cen tye imii*, meaning 'cen is in your head'. Whenever he beats her badly she returns to stay with her mother, but she is dependent on the husband for access to land so as to feed herself and the child she has with him. Her feelings about life were summed about in one short sentence: *Kony olanya ya*, 'Kony has ruined me'.

Of course, the risk in using non-representative samples is that one becomes drawn to the most sensational cases, and the general picture becomes distorted. While it was not possible to quantify the problem of economic and social exclusion that returnees

¹¹⁴ Blattman et. Al 'Reintegration', p.21

¹¹⁵ Blattman et. Al, 'Reintegration', p.21

¹¹⁶ Her name has been changed.

experienced in the research sites visited, Atim Mercy's story was, unfortunately, not an extreme aberrant in the general narrative that many women shared. But there is also a risk of falling into a declarative model of victimhood, rather than a comparative one, i.e. of treating 'returnee' women as an exceptional group with exceptional problems, when perhaps the challenges they face have more to do with other factors such as gender or economic status. In their own words though, the returnee women interviewed said that they felt the problems they faced were linked directly to the fact that they had spent time in Bush, and that non-returnee women did not face challenges to the same degree. Whether or not this is true requires further research, but the logic was framed as follows: women returnees explained that their families and communities cannot come to terms, morally, socially or cosmologically, with the fact that they have spent time in captivity, even though the vast majority were abducted against their will. The women attributed their situation to an attitude they said was common among men and influenced by society: that formerly abducted women have traits that distinguish them from those who were never abducted. There was a general feeling that they were violent and not suited well to marriage: their minds could be rehabilitated and men both feared and resented them. Not one of the twenty-three women interviewed could say that their male partners were loving, kind and could take good care of them, and most said that they were in abusive and insecure relationships. One LC1 explained that men can only ever give women who have been in the bush 'half of their love' because you can 'never know what is in their heads and you fear what it might be', these men, he said, 'can give you children but they cannot love you with all their heart'.¹¹⁷

Women lamented this situation but at the same time felt compelled to live within it. Finding a man who could, as one woman said, 'protect us from humiliation in the community' was noted as a priority for many.¹¹⁸ The pattern though, was familiar, and described well by one woman who explained that:

'whenever we get into relationships with would-be husbands, they kind of reject our children, they say, I cannot father children that were born in captivity, so at all costs wherever we have gone, it has been a problem for us and you will find that we live in very funny relationships. Men do not want to get engaged with us,

¹¹⁷ Author interview with LC1, Bobi sub-County, 23.08.2013; Author interview, Amuru District, 09.08.2012. Many women explained that families would be unwilling to pay (luk) for women returnees, 'we cannot pay for somebody who was in captivity'.

¹¹⁸ Author led group discussion, Agago District, 02.08.2012

although we want to live with them together, but this problem always comes out when we try to do so.¹¹⁹

Male returnees also expressed difficulties in forming relationships with peers and women, coming up against rumours that anyone who stayed with them risked being ‘strangled at night,’ but generally the structural and social impediments to re-settlement appeared less severe.¹²⁰

Barriers to resettlement and acceptance, and the likelihood of experiencing ‘stigmatic shaming’, included upended family structures, often with a deceased father, or both parents deceased; inter-family and inter-village land wrangles; and a willingness to defend oneself in related disputes (often interpreted as ‘provocation’). Relationships were also strained by any perceived ‘abnormal’ behavior: this could range from physical illness and mental distress, to criminal activity and the tendency to be ‘lazy’ or economically unproductive. Female returnees, and particularly those who returned with children, appear to be particularly vulnerable. There were also external interventions which have exaggerated tensions, most notably the perception that returnees were receiving preferential treatment from the authorities, such as the Amnesty Commission, and from NGOs in the form of material assistance.¹²¹ An alarming feature was that in two research sites, young men and women expressed a wish to return to the Bush because of the treatment they were receiving at home. The logic was disturbing: at least in the Bush you *expect* to be treated badly. People articulated a desire to return based on the way were being treated by their own communities and not for political reasons. As one returnee explained:

‘Life is difficult; we would prefer to go back to the Bush if only those of Kony would return. We are suffering, our parents are dead, it was better in captivity, I see no point in staying here. I have no family, no-one cares about me. I am all alone so I would opt to go back. In captivity you are treated badly, but you know your hardships and you know people will not protect you. At home you expect people to support and look after you but they don’t. So, it is really out of frustration that we want to go back’.¹²²

¹¹⁹ Author led group discussion, Nwoya District, 15.08.2012

¹²⁰ Author led group discussion, Gulu District, 25.07.2012

¹²¹ This was a major issue in the early, mid-2000s, but since then, there has been ‘learning’ in the NGO community and most projects now operate on the basis of ‘integration’ of returnees and non-returnees, so as not to exacerbate tensions between these groups.

¹²² Author led group discussion (location withheld).

This reaction suggests serious impediments to co-existence based on the often ‘uncontrolled and repetitive moral and social indignation’ that returnees experience.¹²³ Because a lot of the stigmatization is embedded within family and community settings, and intertwined with the social and economic dynamics of post-conflict life, it becomes very difficult, if not impossible, to determine causation. In an off-hand comment one research assistant explained, after a long day of interviews and focus groups, that people ‘stigmatise for their own reasons’ and because of how life is *now*. Rather than what happened in the bush, it is current pressures on daily existence that are encouraging people to instrumentalise a person’s status as a returnee and use it against him or her to protect their own status or livelihood. There are certain ‘common problems,’ such as a strained relationship with the husband’s family and the co-wives that affect women, ‘whether they were in the bush or not’.¹²⁴ Since the war though, it is more common for these pressures to crystallise around certain identities. Many returnee women explained that the stigma directed at them by their co-wives, designed to ‘make people hate you so that you and your children cannot fit into the home,’ affected their lives profoundly.¹²⁵ The same went for children whose patrilineal descent was unclear, often referred to as ‘*okeyo*’ or illegitimate: this was not a new phenomenon in Acholiland, but for the many children who were born in captivity, the problem of lineage and land has become more pronounced. What became quite apparent was that the social relationships that have always been strained have become increasingly so as the deprivations people suffer daily erode what Amartya Sen has called the ‘bonds of care and concern’ that sustain humanity.¹²⁶ Indeed it is poverty and insecurity and the pressures they impose on moral and social worlds, rather than transitional justice, that really shapes relationships in post-conflict Acholiland.

Conclusion

This chapter paints of a complex picture of the plurality of ways in which people are negotiating and experiencing justice and co-existence in the transition from war to peace

¹²³ Suzanne Retzinger and Thomas Scheff, ‘Strategy for Community Conference: Emotions and Social Bond’, in Galaway et. al, *Restorative Justice: International Perspectives* (New York: International Criminal Justice Press, 1996).

¹²⁴ Author fieldnotes, 01.10.2012

¹²⁵ Author interview, Nwoya District, 01.10.12

¹²⁶ Amartya Sen, ‘Poverty and the Tolerance of the Intolerable’, *LSE Public Lecture, Wednesday 22 January 2014*

in Acholiland. A clearer understanding of local conceptions of justice, co-existence and the power dynamics around these processes begins to shape insight into the relationship between macro-TJ narratives and local realities. That relationship is currently in tension. Here, Amartya Sen's concept of 'plural grounding' is strikingly relevant:

'we can have a strong sense of injustice on many different grounds, and yet not agree on one particular ground as being *the* dominant reason for the diagnosis of injustice'.¹²⁷

In Uganda, transitional justice donors and NGOs and traditional reconciliation and forgiveness promoters are all responding to the *direct* physical violence that people suffered. This is understandable but the uncomfortable reality is that it is not consonant with people's priorities or their interpretations of what might be possible. Across research sites, it was apparent that if there was one dominant diagnosis of injustice, it was *structural* violence: the harm still being done by a set of socio-political structures that remained in place and that were depriving people of their ability to access the basic needs they require to fulfill their potential in life. Every transitional justice measure listed in the AAR was discussed and interpreted in these terms: how will this change our lives? Will it make our lives better, safer, more prosperous or even less secure? This was not just a theoretical question either: as the discussion about re-settlement and re-integration argued, ideas around forgiveness and reconciliation exist in a symbiotic and fragile relationship with the 'political economy of survival' in post-conflict Acholiland.¹²⁸

Does this mean that transitional justice has played no role at all? The broad principles that transitional justice practitioners and advocates promote: accountability, truth, and reconciliation, for example, all carry relevance as ideas. Indeed related issues that are of most immediate concern, for example reconciliation with the dead and justice for land disputes, are being conducted outside of the purview of state authorities and international peace-building projects. So where does transitional justice fit it? Sometimes, depending on context, transitional justice makes sense to people and delivers a sense of 'justness'. Support for the Kwoyelo trial amongst his alleged victims is one example, careful support for ritual is another, and reparation and compensation is almost unequivocally considered a good thing. Transitional justice as experienced in Acholiland, does not, however, have the broad transformative role its proponents often claim for

¹²⁷ Sen, 'Justice', p.2

¹²⁸ Mac Ginty, 'Between', p.180.

it.¹²⁹ Local experiences and attitudes towards these processes do not fit neatly with the normative assumptions and values that advocates ascribe to them. In order to reduce this dissonance, TJ needs either to reign in its own aspirations, or to embark on a much more detailed understanding of local context. In Uganda this would involve a serious engagement with the national political context (as has been discussed in previous chapters), but also an in-depth analysis of local dynamics addressed this in this chapter: the spiritual, social and economic function of land; contrasting notions of time and temporalities; the importance of negotiation with ghosts and spirits; the complexity of public authority systems that transcend the misleading ‘restorative/retributive’ and ‘formal/informal’ divides; and the broader socio-economic factors that shape and place strain on relationships between returnees, their families, broader communities.

¹²⁹ See for example, SIP III paras 32;32;64; Webster, ‘Consensus’.

9. Conclusion

The story of modern efforts to promote transitional justice in Uganda provides a cautionary tale. After a frenetic period of moral, legal, and political debate sparked by the ICC's first arrest warrants against five LRA commanders in 2005, the 'global litmus test' for international justice, on the face of it, was a damp squib. After the AAR agreements were signed at Juba, transitional justice, at the state-level, was largely a donor driven project. It was subsumed into broader governance and peace-building programming, taken up by weak government bureaucracies and out-manoeuvred by political players, sometimes with strategic intent, other times simply as part of a busy and disordered juggling act. The result was a set of abstracted transitional justice narratives and a broad policy framework which too often failed to capture the imagination or meet the psychological and material needs of the people in Acholiland, and which remained largely inconsequential to the realities of everyday life. Those conceptions of transitional justice considered by advocates to be more 'culturally embedded': forgiveness and traditional reconciliation promotion, meanwhile, have, in practice, elicited a deep range of responses and enactments, which expose a gap between the local as imagined, in post-conflict Acholiland, and the local as lived experience.

The anti-politics of transitional justice in Uganda

Chapter 2 charted the genesis and trajectory of the study and practice of the transitional justice paradigm since the late 1980s, setting the context for the subsequent discussion of its implementation in Uganda. It argued that the dominant approach of transitional justice, as practiced by aid and development agencies, is marked by two features. First, while the concept emerged as a way of dealing with regime change in countries transitioning from authoritarianism, by the mid-2000s it had become both normalised and professionalised in a broader post-Cold War political project: that of international liberal peace-building. The type of transition to which transitional justice might apply thus shifted from the domain of political bargaining and contestation (regime change), to a much broader set of peace-building and state-building objectives, including rule of law promotion, resolution of intra-communal violence and re-integration of ex-combatants. Second, it morphed from a largely domestically-driven affair into an international policy intervention, often abstracted from the political context it hoped to transform. The type

of change it envisaged remained deeply political and yet it was deployed as a ‘neutral technology’: as both apolitical and ideologically dispassionate. On application however, it has had to coexist with alternative political and cultural conceptions of how best to respond to mass atrocities. Chapter 3 provided the conceptual framework for understanding how transitional justice interventions fared in Uganda. Through a historical examination of justice and social order and the political relationship between Acholiland and the central state, the chapter provided the context to help understand the way in which a particular response to the twenty-year conflict, *transitional justice*, fit with the broader legal realms and notions of social order upon which it was grafted.

Chapter 4 charted the construction of Uganda’s transitional justice blueprint: the Agreement on Accountability and its Annex. When accountability and reconciliation were discussed at the Juba peace talks, the transitional justice ‘tool-kit’ had expanded to include a range of processes and practices to be applied ‘holistically’ to address the myriad needs of post-conflict societies. As argued in Chapter 4, the AAR agreements reflected this expansion of both means and ends. They presented a veritable ‘shopping list’ of transitional justice options. On paper, taken out of context, the agreements could be interpreted as a declaration of liberal norms and a paradigm shift from impunity and violence towards accountability and peace, but closer examination of the political objectives informing both negotiating parties at Juba revealed the ways in which the TJ ‘toolkit’ was instrumentalised rather than internalised. The agreements did not represent genuine or widespread political consensus on issues of accountability and reconciliation. They were negotiated behind closed doors as a means to circumvent the ICC arrest warrants, to provide avenues for impunity and political narrative shaping, and to keep the talks moving forward.

The failure on the part of justice-sector donors to acknowledge this reality was at the root of the dissonance that existed between the expectations of donors who decided to fund implementation of the AAR agreements and the messy reality of political processes and machinations in a non-transitioning Uganda. Chapters 5 and 6 explored this dissonance and argued that it was domestic politics that shaped the trajectory of transitional justice in Uganda. The same leadership that engaged in the war in the north for twenty years remained in power. The Museveni regime did not confront the classic predicament transitional justice was first designed to address: the need to ‘solve

accountability deficits without exacerbating political instability’.¹ Transitional justice was never a major domestic political issue and the government’s narrative about the war in the north - the barbarism of Joseph Kony and the LRA, and the ‘otherness’ of the Acholi - was widely accepted in most of the country. In short, as far as political elites were concerned, there *was* no transitional justice dilemma after Juba and the AAR agreements could be contained and managed very easily.

Justice sector donors saw things very differently. By the time the Juba talks collapsed in late 2008 transitional justice and its links to peace-building and rule of law objectives were normalised in UN frameworks and programming. As Chapter 5 argued, this logic was re-produced in Uganda, where donors could see the potential of transitional justice to contribute to broader governance objectives. But while the transitional justice agenda was normative, in that it quite openly made links between accountability, human rights and liberal peace and democracy, the approach to policy and implementation was technocratic. It was characterised by three criteria that Frank Fischer’s seminal work on technocracy highlighted: fear of ‘political’ solutions and debate; reluctance to explore conflicting interests and emphasis on positivist, ‘objective’ knowledge in decision-making.² In promoting the idea that political relationships could be altered, and optimal liberalising settlements arrived at through what Centano calls the ‘ideology of method’ or the ‘application of particular practices’, we can make three observations, discussed below.³

First, as Chapters 5 and 6 showed, transitional justice grew its own small bureaucracy: administrative structures were created and legislation was passed. The most significant of these were the JLOS Transitional Justice Working Group, the International Crimes Division and the International Criminal Court Act. These developments represented what Carothers has called ‘type one’ and ‘type two’ rule of law reform.⁴ The former involved the revision and expansion of existing laws; the latter involved the strengthening of law-related institutions, including, for example, judicial capacity building. Donors defended this gradualist approach to transitional justice with the logic of ‘sequencing’. Building capacity in the ICD; training the judiciary in international

¹ De Greiff, ‘Thoughts’, p.2.

² cf. Milja Kurki, ‘Democracy through technocracy? Reflections on Technocratic Assumptions in EU Democracy Promotion Discourse’, *Journal of Intervention and Statebuilding* 5:2 (2011), p.211-234, p.215.

³ cf. Mac Ginty, ‘Routine’, p.291.

⁴ Carothers, ‘Revival’.

crimes and funding JLOS staff to draw up a draft transitional justice strategy would, it was hoped, contribute to a more accountable, peaceful and democratic Uganda. Second, at the time of writing, it was very hard to see how technocratic approaches to transitional justice would cross over into the broader donor goal of genuine political reform. This ‘type three’ reform would require transforming the entrenched and countervailing interests of political elites.⁵ As one veteran development worker recently commented, ‘no amount of technical advice can change basic political calculations’.⁶

A counter-argument might be that transitional justice debates in Uganda have had ‘positive derivative effects’ and that the creation of parallel bureaucracies such as the JLOS-TJWG and institutions such as the ICD have lent ‘additional power to the proponents of liberal values’ and the expansion of accountability norms.⁷ But there is, as yet, little concrete evidence of either. Because transitional justice remained largely within the realm of administrative control, ‘practical and programmatic’ debates were privileged over ‘protracted normative debates’ in policy discussions.⁸ Furthermore, as argued in Chapter 4, the AAR was drawn up before the communities most affected by the violence had a chance to deliberate upon the meaning of justice, accountability and reconciliation in their particular contexts.⁹ In general, there has been very little space for genuine debate about the needs of affected communities in post-conflict Acholiland or what might constitute the ‘good life’. While there was some civil society activity in this area, in practice, it often fell into the same anti-democratic trap. Sensitisation campaigns, stakeholder meetings and training workshops on transitional justice have been predicated on the notion of ‘victim-centered approaches’ but affected communities have too often been presented with a delimited range of options and asked to comment on them. On the ground in Acholiland, as argued in Chapters 7 and 8, there was very little evidence that transitional justice addressed the needs of ‘victims’ or ‘empowered’ them and much more evidence to support the argument of one Acholi lawyer that ‘everyone has let them down, the ICC; the government; their own communities – people, they just want to let

⁵ Ibid.

⁶ Michael Bear Kleinman, ‘Putting the Politics Back Into Development’, *Stanford Social Innovation Review*, 7 (June, 2014).

⁷ Leslie Vinjamuri quoted in Nettlefield, ‘Courting’, p.30.

⁸ Kurki, ‘Democracy’.

⁹ As Chapter 4 argued, while it was true that ‘public consultations’ were carried out in the interim between the signing of the AAR and the signing of the annex, these consultations were largely viewed as a ‘rubber stamp’ to what had already been decided by the parties.

go now, they just want to move on'.¹⁰ The sense of withdrawal, of apathy and of unfulfilled expectations during discussions about transitional justice was quite palpable.

Third, and finally, technocratic approaches towards transitional justice created a double-helix of de-politicisation. The justice sector donors funding transitional justice counter intuitively avoided engaging the political leadership on the types of systemic political changes they hoped to engineer. At the same time, transitional justice provided a convenient shield behind which the leadership of the state could deflect criticism about its political relationship with the north. Transitional justice turned political problems like 'accountability', 'reconciliation' and even 'justice' into technical peace-building or legal problems.¹¹ But it is important, as both Chapters 5 and 6 argued, not to exaggerate the extent to which the political leadership *actively* manipulated the transitional justice agenda. In the more unspectacular instances, explored in Chapter 5, technocratic approaches provided the political and bureaucratic space for perennial procrastination; diversion; damage limitation and occasionally opportunism. This was most clearly evident in relation to debates and programming around reparations and truth telling, described in Chapter 5. In the more dramatic instances, described in Chapter 6, particularly around the conflict between amnesty and prosecution and the trial of Thomas Kwoyelo, President Museveni maintained an equivocal stance. Ultimately it was the military and the security services, in close collaboration with US government advisers who decided the fate of the Amnesty Act. But during the period between its lapsing and its reinstatement and since, the President has maintained what Andrew Mwenda calls an 'unstable equilibrium' between the ICD, the Amnesty Commission and the UPDF. This is characteristic of his governing style which sees him:

'stand atop [this] chaos, fanning it but also stabilising it...(he) has been tolerant and accommodating of everything except one thing he treasures above all else – his job'.¹²

This brings us full circle back to the first observation, which, to paraphrase Ruti Teitel, is that transitional justice in any given context is both constituted by and constitutive of the

¹⁰ Author interview, lawyer, Gulu, 28.07.2012

¹¹ Goodale and Merry, 'Practice', p.351

¹² Andrew Mwenda, 'Uganda's culture of impunity', *The Independent*, 21.01.2013, <http://www.independent.co.ug/the-last-word/the-last-word/7263-ugandas-culture-of-impunity> (accessed 04.12.13).

transition.¹³ The domestic political response to external transitional justice promotion is a reflection of the fact that there has been no substantive political transition and overall there has been very little domestic political pressure to implement the AAR. Transitional justice became a naturalised part of the power structure into which it was subsumed.

Transitional justice scripts and ordinary life

There are many transitional justice scripts in Uganda. Transitional justice is capacious, it provides enough conceptual space for diverse agendas to co-exist, often awkwardly. While prescriptions about the best way forward may differ, what all transitional justice conceptions have in common, argued Chapters 7 and 8, whether it be amnesty, prosecutions, forgiveness or traditional reconciliation, are that they are political constructions which carry a cumulative self-echoing logic: they have a destiny, and they peregrinate accordingly.

Commentators have often objectified Acholi desires around false dichotomies of one form of justice over another. This has led to what Alexander Hinton calls ‘identity shrinkage’.¹⁴ On the one hand, the liberal transitional justice paradigm implies a single, fundamental human identity in which people exist as autonomous, liberal subjects: they have the capacity to achieve and enjoy freedom, equality and rights and they have the chance to engage in democratic and juridical processes as soon as the moment is right. On the other hand, as Chapters 3 and 7 argued, the ethnojustice and forgiveness conceptions of transitional justice are clear examples of cultural relativism, the argument is that the Acholi should both follow and be defined by their ‘culture’. Both identity categories are idealised, and such idealised notions gloss over the ambivalent, dual and ambiguous choices that people make and actions they take in any given set of circumstances.¹⁵

Transitional justice categories such as formal and informal, retributive and restorative, and local and universal tend to emphasise epiphenomenal practices rather than the inter-subjective meanings that shape understandings of them. A closer, more micro-level examination of how people negotiate life in post-conflict Acholiland in Chapter 8,

¹³ Ruti Teitel, *Globalizing Transitional Justice: contemporary essays* (New York: Oxford University Press USA, 2014).

¹⁴ Alexander Hinton, ‘Transitional’, p.7.

¹⁵ *ibid.*

highlighted the hybrid nature of the public authorities that people draw upon and the highly contingent nature of their justice decisions which are based on the most pragmatic and effective means by which to restore balance and meaning to social relations. Sometimes this might be creative and peaceful endeavour, at other times it might be exclusionary or violent. The relationship between rules and practice are dialectic and this complicated reality and the difficult choices that people make cannot, as McAvoy argues, be translated neatly into ‘rights discourses...legal certainties and political objectivity’¹⁶ in the way that the liberal paradigm pre-supposes, nor can it be understood through cultural essentialism.

Chapters 6, 7 and 8 all argued to various degrees that deontologically grounded calls for accountability and criminal prosecutions and even truth telling can represent a profound existential challenge in precarious, post-conflict Acholiland where victims, perpetrators and victim-perpetrators live side by side. Too often though, as Chapter 7 showed, pragmatic non-participation has been confused with a culturally determinate predilection for forgiveness, reconciliation and acceptance. This argued the veteran head of Gulu’s NGO forum, was worrying. ‘The Acholi’, he argued ‘are a very resilient people but that does not mean there is no pain in them and that they don’t hurt’.¹⁷ The problem with rhetoric that presents an ideal vision of ‘the Acholi’ capacity to forgive and reconcile, argued Chapters 7 and 8, is that it does not take account of the many pressures that people face on a daily basis, whether linked to feelings of vindication about what they experienced during the war or to exclusion and marginalization as a result of their status of a ‘returnee’, in all its complexity. The struggle to restore a sense of social order and meaning is profound and labyrinthine and linked to a multitude of different factors, none of which can be self-contained or portioned off from the other. Chapter 8 explored the inter-linkages of the spiritual world, of land, and of poverty as important factors that determine whether or not someone feels that can move on with life. The reality of this was quite a shock to one NGO worker, an Acholi himself, who had been working for a long time promoting conventional transitional justice across the region such as ‘traditional’ processes, truth-telling and memorials. Then he got a new job and took a step back from things and began to feel uncomfortable.

‘There is a real dilemma that I came to understand after I left [the organization]. Transitional justice should be about breaking cycles of violence and suffering.

¹⁶ McAvoy, ‘Legalism’, p.419.

¹⁷ Author interview with former NGO project director, 27.05.2012.

But those cycles of violence are fed by very specific acts and factors and you need to tap into those things. I have not seen any process that is grounded on concrete data about where you should focus your efforts, I mean, what about land use, why weren't we thinking about those things? Then I think, oh no, oh god, what was all that about?¹⁸

Transitional justice is not ordinary justice but it needs to understand ordinary life. A more poetic way of explaining this is in the words of Okot p'Bitek himself, who wrote in the *Artist and the Ruler* that 'human beings do not behave like dry leaves, smoke or clouds which are blown here and there by the wind'.¹⁹ An intervention that tries to transform societies and yet takes no account of the building blocks that shape 'ideas about what life is all about', represents a rather superficial endeavour.

Implications

In a recent meeting of scholars discussing the major limitations and unintended consequences of transitional justice policy across contexts, one asked the question: 'what would happen if we just stopped?'.²⁰ What if funding stopped, advocacy stopped, the whole thing just stopped? Would things be any worse? Would they be any better? Of course it was a provocative question and this thesis cannot claim to answer it but three points from the Ugandan case do appear particularly pertinent to the transitional justice endeavour in all its various forms, and are ripe for further research.

The first relates to the dynamics and wisdom of transitional justice promotion at the state level in the absence of political transition. Donors made the calculation that the Ugandan state was to be an effective or at least legitimate provider of transitional justice and thus a deserving recipient of international aid to build up its capacity in this area. Given the nature of the war in northern Uganda and the nature of Ugandan politics this remains a puzzling decision. What international policymakers overlooked in their enthusiasm for transitional justice was that achieving the sort of transformative change TJ proponents claim for it: peace, reconciliation and rule of law, would require far more than a series of technical fixes. It would involve a major re-shaping of existing power arrangements and fundamental changes in the way in which citizens relate to state

¹⁸ *ibid.*

¹⁹ p'Bitek, 'Artist', p.13

²⁰ Transcript of Transitional Justice Workshop, International Studies Association, Toronto, 25 March 2014

authority, as well as to each other.²¹ This latter point is crucial because it highlights something that reified institutions alone cannot deliver, which is a shared popular belief that transitional justice processes are ‘fundamentally just’, in other words, the law and social norms need to correspond.²²

The second point is that social engineering is difficult to achieve. Transitional justice conceptions in Uganda are all in some form or another, an attempt to mould a type of subject, whether he or she be the liberal individual or the ideal ‘golden age’ Acholi of the ethnojustice imagination, or an acceptable mixture of the two. Furthermore, assuming that a declaration of forgiveness or attendance at a reconciliation ritual makes relations significantly better is too easy and it does not reflect the underlying grievances that people hold about what they experienced. There exists then, an under-explored gap between process and outcome. This highlights a need for sounder engagement with the ‘hidden’ and the ‘after’. Does the declaration of forgiveness or the performance of ritual significantly restore inter-personal and communal relations? This thesis argued that the reality is more complex and that post-conflict inter-communal relations are dependent on the wider socio-economic context including poverty, insecurity and other quotidian strains in Acholiland.

The third point is that transitional justice conceptions may carry a degree of meaning in Acholiland but they lack bearing and too often they make little sense to people who understand the political and social constraints within which they exist much better than external observers, policy makers and civil society activists do. It is difficult to imagine how these broad ideas and what Veena Das calls ‘grand gestures’, might be anchored to everyday realities in a way that would help people in their immediate context. Given that transitional justice promoters in Uganda claim to be ‘victim-centered’, and make explicit links between transitional justice, peace-building and reconciliation, this is a problem. An ex-pat NGO worker who had been living in Acholiland for eight years explained how, from the very outset, transitional justice agendas had been ‘wildly out of synch’ with local needs.²³ So should it all just stop? Perhaps not, but certainly it needs to be drastically re-imagined. A good place to start is with more self-reflexive honesty about what transitional justice really is; more humility about what it can really achieve, and a

²¹ Carothers, ‘Revival’.

²² Francis Fukuyama, ‘Transitions to the Rule of Law’, *Journal of Democracy*, 21:1 (2010), p.37.

²³ Das, ‘Life’.

commitment to better understand and better represent societies in question. This is where this thesis hopes to contribute: through a systematic, empirical examination – in the Ugandan context - of the dissonances between transitional justice conceptions kept in stasis by their epistemic boundaries and the kinds of pragmatic, fluid and variable approaches that States, communities and individuals adopt in response to the concrete, quotidian challenges of post-conflict life.

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**Appendix: The Agreement on Accountability and Reconciliation
(2007) and the Annexure (2008)**

**AGREEMENT ON ACCOUNTABILITY AND RECONCILIATION
BETWEEN THE GOVERNMENT OF THE REPUBLIC OF UGANDA AND
THE LORD'S RESISTANCE ARMY/MOVEMENT
JUBA, SUDAN**

This Agreement, between the Government of Uganda (The Government) and the Lord's Resistance Army/Movement (LRA/M) (herein referred to as the Parties), witnesseth that:

PREAMBLE

WHEREAS THE PARTIES:

HAVING BEEN engaged in protracted negotiations in Juba, Southern Sudan, in order to find just, peaceful and lasting solutions to the long-running conflict, and to promote reconciliation and restore harmony and tranquillity within the affected communities and in Uganda generally;

CONSCIOUS of the immense, pain, suffering, injury and adverse socio-economic and political impacts of the conflict, and of the serious crimes, human rights violations; and recognising the need to honour the victims by promoting lasting peace with justice;

COMMITTED to preventing impunity and promoting redress in accordance with the Constitution and international obligations and recalling, in this connection, the requirements of the Rome Statute of the International Criminal Court (ICC) and in particular the principle of complementarity;

DRIVEN by the need for adopting appropriate justice mechanisms, including customary processes of accountability, that would resolve the conflict while promoting reconciliation and convinced that this Agreement is a sound basis for achieving that purpose;

GUIDED BY the Objective Principle of the Constitution, which directs that there shall be established and nurtured institutions and procedures for the resolution of conflicts fairly and peacefully; and further recalling the Constitutional duty on the courts of Uganda to promote reconciliation between contesting parties;

NOW THEREFORE THE PARTIES AGREE as follows:

1. DEFINITIONS

Unless the context suggests otherwise, the following words and phrases shall have the meaning assigned thereto:

“Ailuc” refers to the traditional rituals performed by the Madi to reconcile parties formerly in conflict, after full accountability.

“Alternative justice mechanisms” refers to justice mechanisms not currently administered in the formal courts established under the Constitution.

“the conflict” means the Northern and North-eastern Uganda conflict, and includes the impacts of that conflict in the neighbouring countries.

“Constitution” means the Constitution of the Republic of Uganda.

“Culo Kwor” refers to the compensation to atone for homicide as practiced in Acholi and Lango cultures, and any other forms of reparation for any other purposes, after full accountability.

“Gender” refers to the two sexes, men and women, within the context of society.

“Government” means the Republic of Government of Uganda.

“Kayo Cuk” refers to the traditional accountability and reconciliation processes practiced by the Langi communities after full accountability and reconciliation has been attained between parties formerly in conflict, after full accountability.

“Mato Oput” refers to the traditional ritual performed by the Acholi after full accountability and reconciliation has been attained between parties formerly in conflict, after full accountability.

“Reconciliation” refers to the process of restoring broken relationships and re-establishing harmony.

“Tonu ci Koka” refers to the traditional rituals performed by the Madi to reconcile parties formerly in conflict, after full accountability;

“Victims” means persons who have individually or collectively suffered harm as a consequence of crimes and human rights violations committed during the conflict.

2. COMMITMENT TO ACCOUNTABILITY AND RECONCILIATION

- 2.1. The Parties shall promote national legal arrangements, consisting of formal and non formal institutions and measures for ensuring justice and reconciliation with respect to the conflict.

- 2.2. The accountability processes stipulated in this Agreement shall relate to the period of the conflict. However, this clause shall not prevent the consideration and analysis of any relevant matter before this period, or the promotion of reconciliation with respect to events that occurred before this period.
- 2.3. The Parties believe that a comprehensive, independent and impartial analysis of the history and manifestations of the conflict, especially the human rights violations and crimes committed during the course of the conflict, is an essential ingredient for attaining reconciliation at all levels.
- 2.4. The Parties agree that at all stages of the development and implementation of the principles and mechanisms of this Agreement, the widest possible consultations shall be promoted and undertaken in order to receive the views and concerns of all stakeholders, and to ensure the widest national ownership of the accountability and reconciliation processes. Consultations shall extend to state institutions, civil society, academia, community leaders, traditional and religious leaders, and victims.
- 2.5. The Parties undertake to honour and respect, at all times, all the terms of this Agreement which shall be implemented in the utmost good faith and shall adopt effective measures for monitoring and verifying the obligations assumed by the Parties under this Agreement.

3. PRINCIPLES OF GENERAL APPLICATION

- 3.1. Traditional justice mechanisms, such as *Culo Kwor*, *Mato Oput*, *Kayo Cuk*, *Ailuc* and *Tonu ci Koka* and others as practiced in the communities affected by the conflict, shall be promoted, with necessary modifications, as a central part of the framework for accountability and reconciliation.

Conduct of Proceedings

- 3.2. The Parties recognise that any meaningful accountability proceedings should, in the context of recovery from the conflict, promote reconciliation and encourage individuals to take personal responsibility for their conduct.
- 3.3. With respect to any proceedings under this Agreement, the right of the individual to a fair hearing and due process, as guaranteed by the Constitution, shall at all times be protected. In particular, in the determination of civil rights and obligations or any criminal charge, a person shall be entitled to a fair, speedy and public hearing before an independent and impartial court or tribunal established by law.

- 3.4. In the conduct of accountability and reconciliation processes, measures shall be taken to ensure the safety and privacy of witnesses. Witnesses shall be protected from intimidation or persecution on account of their testimony. Child witnesses and victims of sexual crimes shall be given particular protection during proceedings.

Cooperation within proceedings

- 3.5. The Parties shall promote procedures and approaches to enable individuals to cooperate with formal criminal or civil investigations processes and proceedings. Cooperation may include the making of confessions, disclosures and provision of information on relevant matters. The application of any cooperation procedures shall not prejudice the rights of cooperating individuals.
- 3.6. Provisions may be made for the recognition of confessions or other forms of cooperation to be recognised for purposes of sentencing or sanctions.

Legal representation

- 3.7. Any person appearing before a formal proceeding shall be entitled to appear in person or to be represented at that person's expense by a lawyer of his or her choice. Victims participating in proceedings shall be entitled to be legally represented.
- 3.8. Provision shall be made for individuals facing serious criminal charges or allegations of serious human rights violations and for victims participating in such proceedings, who cannot afford representation, to be afforded legal representation at the expense of the State.

Finality and effect of proceedings

- 3.9. In order to achieve finality of legal processes, accountability and reconciliation procedures shall address the full extent of the offending conduct attributed to an individual. Legislation may stipulate the time within which accountability and reconciliation mechanisms should be undertaken.
- 3.10. Where a person has already been subjected to proceedings or exempted from liability for any crime or civil acts or omissions, or has been subjected to accountability or reconciliation proceedings for any conduct in the course of the conflict, that person shall not be subjected to any other proceedings with respect to that conduct.

4. ACCOUNTABILITY

- 4.1. Formal criminal and civil justice measures shall be applied to any individual who is alleged to have committed serious crimes or human rights violations in the course of the conflict. Provided that, state actors shall be subjected to existing criminal justice processes and not to special justice processes under this Agreement.
- 4.2. Prosecutions and other formal accountability proceedings shall be based upon systematic, independent and impartial investigations.
- 4.3. The choice of forum for the adjudication of any particular case shall depend, amongst other considerations, on the nature and gravity of the offending conduct and the role of the alleged perpetrator in that conduct.
- 4.4. For purposes of this Agreement, accountability mechanisms shall be implemented through the adapted legal framework in Uganda.

5. LEGAL AND INSTITUTIONAL FRAMEWORK

- 5.1. The Parties affirm that Uganda has institutions and mechanisms, customs and usages as provided for and recognised under national laws, capable of addressing the crimes and human rights violations committed during the conflict. The Parties also recognise that modifications may be required within the national legal system to ensure a more effective and integrated justice and accountability response.
- 5.2. The Parties therefore acknowledge the need for an overarching justice framework that will provide for the exercise of formal criminal jurisdiction, and for the adoption and recognition of complementary alternative justice mechanisms.
- 5.3. Alternative justice mechanisms shall promote reconciliation and shall include traditional justice processes, alternative sentences, reparations, and any other formal institutions or mechanisms.
- 5.4. Insofar as practicable, accountability and reconciliation processes shall be promoted through existing national institutions and mechanisms, with necessary modifications. The Parties shall consult on the need to introduce any additional institutions or mechanisms for the implementation of this Agreement.
- 5.5. The Parties consider that the Uganda Human Rights Commission and the Uganda Amnesty Commission are capable of implementing relevant aspects of this Agreement.

Legislative and policy changes

- 5.6. The Government will introduce any necessary legislation, policies and procedures to establish the framework for addressing

accountability and reconciliation and shall introduce amendments to any existing law in order to promote the principles in this Agreement.

6. FORMAL JUSTICE PROCESSES

- 6.1. Formal courts provided for under the Constitution shall exercise jurisdiction over individuals who are alleged to bear particular responsibility for the most serious crimes, especially crimes amounting to international crimes, during the course of the conflict.
- 6.2. Formal courts and tribunals established by law shall adjudicate allegations of gross human rights violations arising from the conflict.

Sentences and Sanctions

- 6.3. Legislation shall introduce a regime of alternative penalties and sanctions which shall apply, and replace existing penalties, with respect to serious crimes and human rights violations committed by non-state actors in the course of the conflict.
- 6.4. Alternative penalties and sanctions shall, as relevant: reflect the gravity of the crimes or violations; promote reconciliation between individuals and within communities; promote the rehabilitation of offenders; take into account an individual's admissions or other cooperation with proceedings; and, require perpetrators to make reparations to victims.

7. RECONCILIATION

- 7.1. The Parties shall promote appropriate reconciliation mechanisms to address issues arising from within or outside Uganda with respect to the conflict.
- 7.2. The Parties shall promote collective as well as individual acts and processes of reconciliation shall be promoted at all levels.
- 7.3. Truth-seeking and truth-telling processes and mechanisms shall be promoted.

8. VICTIMS

- 8.1. The Parties agree that it is essential to acknowledge and address the suffering of victims, paying attention to the most vulnerable groups, and to promote and facilitate their right to contribute to society.

- 8.2. The Government shall promote the effective and meaningful participation of victims in accountability and reconciliation proceedings, consistently with the rights of the other parties in the proceedings. Victims shall be informed of the processes and any decisions affecting their interests.
- 8.3. Victims have the right of access to relevant information about their experiences and to remember and commemorate past events affecting them.
- 8.4. In the implementation of accountability and reconciliation mechanisms, the dignity, privacy and security of victims shall be respected and protected.

9. REPARATIONS

- 9.1. Reparations may include a range of measures such as: rehabilitation; restitution; compensation; guarantees of non-recurrence and other symbolic measures such as apologies, memorials and commemorations. Priority shall be given to members of vulnerable groups.
- 9.2. The Parties agree that collective as well as individual reparations should be made to victims through mechanisms to be adopted by the Parties upon further consultation.
- 9.3. Reparations may be ordered to be made by perpetrators as part of penalties and sanctions in accountability proceedings.

10. GENDER

In the implementation of this Agreement, a gender-sensitive approach shall be promoted and in particular, implementers of this Agreement shall strive to prevent and eliminate any gender inequalities that may arise.

11. WOMEN AND GIRLS

In the implementation of this Agreement it is agreed to:

- (i) Recognise and address the special needs of women and girls.
- (ii) Ensure that the experiences, views and concerns of women and girls are recognised and taken into account.
- (iii) Protect the dignity, privacy and security of women and girls.

- (iv) Encourage and facilitate the participation of women and girls in the processes for implementing this agreement.

12. CHILDREN

In the implementation of this Agreement it is agreed to:

- (i) Recognise and address the special needs of children and adopt child-sensitive approaches.
- (ii) Recognise and consider the experiences, views and concerns of children.
- (iii) Protect the dignity, privacy and security of children in any accountability and reconciliation proceedings.
- (iv) Ensure that children are not subjected to criminal justice proceedings, but may participate, as appropriate, in reconciliation processes.
- (v) Promote appropriate reparations for children.
- (vi) Encourage and facilitate the participation of children in the processes for implementing this Agreement.

13. RESOURCES

The Government will avail and solicit resources for the effective implementation of this Agreement.

14. OBLIGATIONS AND UNDERTAKINGS OF THE PARTIES

The Parties:

- 14.1. Expeditiously consult upon and develop proposals for mechanisms for implementing these principles.
- 14.2. Ensure that any accountability and reconciliation issues arising in any other agreement between themselves are consistent and integrated with the provisions of this Agreement.

The Government:

- 14.3. Adopt an appropriate policy framework for implementing the terms of this Agreement.

- 14.4. Introduce any amendments to the Amnesty Act or the Uganda Human Rights Act in order to bring it into conformity with the principles of this Agreement.
- 14.5. Undertake any necessary representations or legal proceedings nationally or internationally, to implement the principles of this Agreement.
- 14.6. Address conscientiously the question of the ICC arrest warrants relating to the leaders of the LRA/M.
- 14.7. Remove the LRA/M from the list of Terrorist Organisations under the Anti-Terrorism Act of Uganda upon the LRA/M abandoning rebellion, ceasing fire, and submitting its members to the process of Disarmament, Demobilisation, and Reintegration.
- 14.8. Make representations to any state or institution which has proscribed the LRA/M to take steps to remove the LRA/M or its members from such list.

The LRA/M:

- 14.9. The LRA/M shall assume obligations and enjoy rights pursuant to this Agreement.
- 14.10. The LRA/M shall actively promote the principles of this Agreement.

15. ADOPTION OF MECHANISMS FOR IMPLEMENTING THIS AGREEMENT

- 15.1. The Parties shall negotiate and adopt an annexure to this Agreement which shall set out elaborated principles and mechanisms for the implementation of this Agreement. The annexure shall form a part of this Agreement.
- 15.2. The Parties may agree and the Mediator will provide additional guidance on the matters for the Parties to consider and consult upon in the interim period, in developing proposals for mechanisms for implementing this Agreement.

16. COMMENCEMENT

This Agreement shall take effect upon signature.

IN WITNESS WHEREOF the duly authorized representatives of the parties have hereunto appended their respective signatures at Juba, South Sudan, this 29th day of June 2007.

ANNEXURE TO THE AGREEMENT ON ACCOUNTABILITY AND RECONCILIATION, 19 FEBRUARY 2008

The Annexure to the Agreement on Accountability and Reconciliation signed between the Government of the Republic of Uganda (the Government) and the Lord's Resistance Army/Movement (LRA/M) (the Parties) on 29th June 2007 (the Principal Agreement) provides as follows:

The parties

Having signed the Principal Agreement by which the parties committed themselves to implementing accountability and reconciliation with respect to the conflict;

Pursuant to the terms of the principal agreement calling for the adoption of mechanisms for implementing accountability and reconciliation;

Having carried out broad consultations within and outside Uganda, and in particular, with communities that have suffered most as a result of the conflict;

Having established through consultations under Clause 2.4 of the principal agreement, that there is national consensus in Uganda that adequate mechanisms exist or can be expeditiously established to try the offences committed during the conflict;

Recalling their commitment to preventing impunity and promoting redress in accordance with the Constitution and international obligations, and recalling, in this connection, the requirements of the Rome Statute of the International Criminal Court (ICC) and in particular the principle of complementarity;

Confident that the Principal Agreement embodies the necessary principles by which the conflict can be resolved with justice and reconciliation and consistent with national and international aspirations and standards;

Now therefore agree as follows:

Primacy of the Principal Agreement

1. This Annexure sets out a framework by which accountability and reconciliation are to be implemented pursuant to the principal agreement, provided that this annexure shall not in any way limit the application of that agreement, whose provisions are to be implemented in full.
2. The government shall expeditiously prepare and develop the necessary legislation and modalities for implementing the principal agreement and this annexure ('the agreement').
3. The government, under clause 2 above, shall take into account any representations from the parties on findings arising from the consultations

undertaken by the parties and any input by the public during the legislative process.

Inquiry into the past and related matters (Principal Agreement: clauses 2.2 & 2.3)

4. The government shall by law establish a body to be conferred with all the necessary powers and immunities, whose functions shall include:

- (a) to consider and analyse any relevant matters including the history of the conflict;
- (b) to inquire into the manifestations of the conflict;
- (c) to inquire into human rights violations committed during the conflict, giving particular attention to the experiences of women and children;
- (d) to hold hearings and sessions in public and private;
- (e) to make provision for witness protection, especially for children and women;
- (f) to make special provision for cases involving gender based violence;
- (g) to promote truth-telling in communities and in this respect to liaise with any traditional or other community reconciliation interlocutors;
- (h) to promote and encourage the preservation of the memory of the events and victims of the conflict through memorials, archives, commemorations and other forms of preservation;
- (i) to gather and analyse information on those who have disappeared during the conflict;
- (j) to make recommendations for the most appropriate modalities for implementing a regime of reparations, taking into account the principles set out in the principal agreement;
- (k) to make recommendations for preventing any future outbreak of conflict;
- (l) to publish its findings as a public document;
- (m) to undertake any other functions relevant to the principles set out in this agreement.

5. In the fulfilment of its functions, the body shall give precedence to any investigations or formal proceedings instituted pursuant to the terms of this agreement. Detailed guidelines and working practices shall be established to

regulate the relationship between the body and any other adjudicatory body seized of a case relating to this agreement.

6. The body shall be made up of individuals of high moral character and proven integrity and the necessary expertise for carrying out its functions. In particular, its composition shall reflect a gender balance and the national character.

Legal and Institutional Framework (Principal Agreement: Part 5)

7. A special division of the High Court of Uganda shall be established to try individuals who are alleged to have committed serious crimes during the conflict.

8. The special division of the High Court shall have a registry dedicated to the work of the division and in particular, shall make arrangements to facilitate the protection and participation of witnesses, victims, women and children.

9. For the proper functioning of the special division of the court in accordance with the agreed principles of accountability and reconciliation, legislation may provide for:

- (a) The constitution of the court;
- (b) The substantive law to be applied;
- (c) Appeals against the decisions of the court;
- (d) Rules of procedure;
- (e) The recognition of traditional and community justice processes in proceedings.

Investigations and Prosecutions (Principal Agreement: Part 4)

10. The government shall establish a unit for carrying out investigations and prosecutions in support of trials and other formal proceedings as envisaged by the principal agreement.

11. The unit shall have a multi-disciplinary character.

12. The Director of Public Prosecutions shall have overall control of the criminal investigations of the unit and of the prosecutions before the special division.

13. Investigations shall:

- (a) Seek to identify individuals who are alleged to have planned or carried out widespread, systematic, or serious attacks directed against civilians;

(b) Reflect the broad pattern of serious crimes and violations committed during the conflict;

(c) Give particular attention to crimes and violations against women and children committed during the conflict.

14. Prosecutions shall focus on individuals alleged to have planned or carried out widespread, systematic, or serious attacks directed against civilians or who are alleged to have committed grave breaches of the Geneva Conventions.

Cooperation with Investigations and Proceedings (Principal Agreement: Clauses 3.5 & 3.6)

15. Rules and procedures shall regulate the manner in which an individual may cooperate with any investigations and proceedings arising from this Agreement, by disclosure of all relevant information relating to:

(a) His or her own conduct during the conflict;

(b) Details which may assist in establishing the fate of persons missing during the conflict;

(c) The location of land mines or unexploded ordnances or other munitions; and,

(d) Any other relevant information.

Provided that a person shall not be compelled to disclose any matter which might incriminate him or her.

Reparations (Principal Agreement: Clauses 6.4 & 9)

16. The government shall establish the necessary arrangements for making reparations to victims of the conflict in accordance with the terms of the principal agreement.

17. Prior to establishing arrangements for reparations, the government shall review the financial and institutional requirements for reparations, in order to ensure the adoption of the most effective mechanisms for reparations.

18. In reviewing the question of reparations, consideration shall be given to clarifying and determining the procedures for reparations.

Traditional Justice (Principal Agreement: Clause 3.1)

19. Traditional justice shall form a central part of the alternative justice and reconciliation framework identified in the principal agreement.

20. The government shall, in consultation with relevant interlocutors, examine the practices of traditional justice mechanisms in affected areas, with a view to identifying the most appropriate roles for such mechanisms. In particular, it shall consider the role and impact of the processes on women and children.

21. The Traditional Justice Mechanisms referred to include:

i. Mato Oput in Acholi, Kayo Cuk in Lango, Ailuc in Teso, Tonu ci Koka in Madi and Okukaraba in Ankole; and

ii. Communal dispute settlement institutions such as family and clan courts.

22. A person shall not be compelled to undergo any traditional ritual.

Provisions of General Application

23. Subject to clause 4.1 of the principal agreement, the Government shall ensure that serious crimes committed during the conflict are addressed by the special Division of the High Court; traditional justice mechanisms; and any other alternative justice mechanism established under the principal agreement, but not the military courts.

24. All bodies implementing the agreement shall establish internal procedures and arrangements for protecting and ensuring the participation of victims, traumatised individuals, women, children, persons with disabilities and victims of sexual violence in proceedings.

25. In the appointment of members and staff of institutions envisaged by the Agreement, overriding consideration shall be given to the competences and skills required for the office, and gender balance shall be ensured.

26. The mediator shall from time to time receive or make requests for reports on the progress of the implementation of the agreement.